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Is Canada's *Oceans Act* up to the job on its 20th anniversary?

A backgrounder on proposed amendments to Canada's flagship marine protection law

Yesterday, the federal government announced proposed amendments to the *Oceans Act,* Canada's flagship marine protection law. While these amendments are welcome additions, given the many challenges facing our marine areas, it's disappointing that the government chose not to do a more thorough regulatory reboot.

As recommended by the recent unanimous report from the Standing Committee on Environment and Sustainable Development, for the long arm of the law to be truly effective we need even stronger legal powers. With the world's longest coastline and three vastly different oceans, Canadians deserve an effective, forceful and modern *Oceans Act*. This is why West Coast Environmental Law Association encourages our Members of Parliament to include stronger minimum protection standards in these amendments.

Below we outline both the positives of the proposed amendments and the next steps needed to strengthen our *Act* and steer us through the stormy waters ahead.

Statutory Deadlines for Interim Marine Protected Areas: A step in the right direction, but should be more broadly applied

The current process to designate an MPA moves at the pace of a sea slug. It takes at least seven years to designate a MPA, and then many more to complete the related management plan.

That's why West Coast Environmental Law Association is pleased with the proposed new process to allow for designation of Interim Marine Protected Areas by a Ministerial Order, a far faster procedure than the current Governor in Council (Cabinet) process. When this new option is used, the government will be bound by a five year statutory deadline to convert the Interim area into a permanent *Oceans Act* MPA through regulation.

These deadlines will make the process more efficient and time-sensitive and, as West Coast and others advocate, should be implemented for all MPAs, no matter how they are designated. Statutory deadlines are common legislative requirements that reduce delay.

If five years is enough time to complete an Interim MPA, it should also be sufficient for a 'regular' MPA. Without a deadline, action can languish. At least one *Oceans Act* MPA – Sgaan Kinghlas - Bowie Seamount MPA, located off the west coast of Haida Gwaii – lacks a management plan almost a decade after designation.

Freezing the footprint of human activities in Interim Marine Protected Areas

The amendments to the *Oceans Act* propose freezing new human activities within Interim Marine Protected Areas. Existing 'ongoing' activities in the area could continue at the same level; new activities could be prohibited (but don't have to be). Companion amendments to the *Canada Petroleum Resources Act* would also create the authority to prohibit new oil and gas activities and to cancel existing oil and gas interests in all MPAs, Interim and otherwise.

While these additions are promising, West Coast continues to emphasize the need for minimum protection standards for all MPAs to be built into the legislation.

All too often, years of negotiations are consumed in discussions over which resource extraction activities can and cannot take place in an MPA on a case-by-case basis, an unsettling and frustrating discussion given that the primary purpose of MPAs is *protection*.

Site-by-site negotiation adds to delay and leads to whittling down both the size of new MPAs and the amount of an MPA that is fully protected from all harmful activities. A preferable longer-term solution that we advocate – and that the Parliamentary Committee on Environment and Sustainable Development has recommended in its recent unanimous report – is for the *Oceans Act* to specify minimum protection standards for MPAs. Legally enshrining these standards can provide certainty, help us meet accepted international standards, and ultimately result in healthier oceans. Scientific evidence has made it clear that for MPAs to be effective marine conservation tools, large zones of MPAs should be off-limits to many human activities. The law should be equally clear.

A protected area is no place for oil and gas drilling, seismic activity, or seabed mining. It's no place for dumping waste. And it's no place for industrial scale fishing that can damage the seafloor and take too many fish out of the oceans' web of life.

Canadians would be appalled at the notion of a large new mine in Pacific Rim National Park or an oil well in Banff National Park. Yet the *Oceans Act* as it is now written does not explicitly prohibit these types of damaging activities in *marine* protected areas.

Prudence in practice: The precautionary principle prevails

The government's use of the precautionary principle is a strong point in the proposed *Oceans Act* amendments. West Coast believes that this core tenet of modern environmental law, first adopted at the Rio Earth Summit in 1992, should be the centerpiece of all Canada's environmental statutes, and should guide the regulation of all our activities in the ocean.

The proposed amendments for Interim Marine Protected Areas provide that lack of scientific certainty regarding the risks posed by any activity that may be carried out in the sea cannot be used as a reason to postpone MPA designation. Applying the precautionary principle means the government recognizes that lack of evidence of harm is not the same thing as evidence of lack of harm.

Precaution may have prevented the Atlantic cod collapse. Precaution can stave off further declines in fish and whales. Precaution can safeguard our vital foreshores where forage fish spawn and natural processes provide resilience in the face of sea level rise.

Our oceans are in precarious shape, and we need to act now.

Background on West Coast's Marine Program

West Coast Environmental Law Association's Marine program focuses on strengthening Canada's laws for ocean protection. As these amendments were being announced, West Coast concluded a multi-day workshop on the *Oceans Act* in Ottawa that convened government, scientists, researchers, industry, legal experts and environmental groups to consider how well this 20-year-old law meets our current ocean protection needs. In the past year, Staff Lawyer Linda Nowlan has testified at Parliamentary Committee hearings on the *Oceans Act*, the *Fisheries Act* and the federal government's system of protected areas. West Coast has also produced law reform briefs on all these issues, and is involved in a number of ocean planning and protection advisory processes in BC, Canada and internationally.