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Working Together Under the NMCA Act




What is an NMCA?

- o NMCAs are a type of marine protected area administered by Parks Canada.



Canada NMCA Act

- o Canada National Marine Conservation Areas Act provides the legal framework to establish and manage NMCAs.



Photo: Mark Hebert

Governance Framework

- o What guides how a NMCA Reserve is managed and used?
 - The legislative framework of the NMCA Act.
 - Legislative tools of other federal government authorities.
 - Any land claim agreement negotiated between First Nations and the Gov't of Canada.
 - Any additional agreements between Canada and others for carrying out the purposes of the Act.



Photos: Getty, Tomascok

Why establish NMCAs?

4. (1) Marine conservation areas are established for the purpose of **protecting and conserving representative marine areas** for the benefit, education and enjoyment of the people of Canada and the world.




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NMCA Establishment

- o Require federal ownership of seabed and lands. s.5(2)(a)
- o MMCA reserves are established where area subject to claim in respect of aboriginal rights accepted for negotiation s.4(2).
- o New NMCAs are tabled in parliament prior to establishment. s.7(1)



Photos: Steve Mitchell

Federal Authorities

8.(1) The **Minister** is responsible for the **administration, management and control** of marine conservation areas **in relation to matters not assigned by law to any other Minister of the Crown.**

- Parks Canada is the lead federal authority for NMCAs and the administration of public lands within an NMCA. s 8.(1)
- Parks Canada does not administer or manage NMCAs alone. Other federal departments maintain their authorities (e.g. DFO (fishing) and TC (transport)).



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Working Together

- Preamble of Act affirms the need to:

Involve federal and provincial ministers, agencies, affected **coastal communities**, aboriginal governments, bodies established under land claims agreements and other appropriate persons and bodies in the effort to **establish** and **maintain** the representative system of **marine conservation areas.**



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Consultation

- Consultation is a key component of the establishment and management of NMCAs.
- Local support and involvement are essential.
- Act provides for consultation:
 - 7.(1)(a) before establishment
 - 9.(1) on Management Plans
 - 10.(1) on development of policy and regulations
 - 11.(3) on composition of advisory committees



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Management Bodies

- Advisory Committees are a key component of the management of NMCAs.
- Under NMCA Act:
 - Area Advisory Committees must be established s11.(1).
 - Other Advisory Committees may be created. 11.(2)
 - We must consult on composition of advisory committees. 11.(3)



Agreements

8.(4) The Minister may enter into **agreements** with other federal and provincial ministers and agencies, **local** and aboriginal **governments**, bodies established under land claims agreements and other persons and other organizations **for carrying out the purposes of this Act.**



Local Gov't & Cooperative Mgmt.

- There are many federal legislative and regulatory tools that can be used to manage NMCA's effectively.
- Within the NMCA governance model, local government has a number of mechanism to affect decision-making.
- How local government will be involved in governance will be part of consultations.
- Unique opportunity to figure out how we can better work together.



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Management and Use

Canada

Management and Use

4.(3) Marine conservation areas shall be **managed and used** in a **sustainable** manner that meets the needs of present and future generations **without compromising the structure and function of the ecosystems**, including the submerged lands and water column, with which they are associated.



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What Activities are Permitted?

- Activities are managed consistent with conservation and sustainable use objectives for the area.
 - ✓ Traditional harvest
 - ✓ Commercial fishing
 - ✓ Recreational fishing
 - ✓ Shipping
 - ✓ Marine transport
 - ✓ Recreation & Tourism

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What Activities are not Permitted?

- ✗ Oil and gas exploration
- ✗ Oil and gas development
- ✗ Undersea mining



Photos: Tomas Tomasek

Management Approach

9.(3) In order to protect marine ecosystems and maintain marine biodiversity, the **primary considerations** in the development and modification of management plans... shall be **principles of ecosystem management** and the **precautionary principle**.



Management Plans

- 9.(4) **Provisions** of a management plan or an interim management plan respecting **fishing, aquaculture and fisheries management** are subject to an **agreement** between the Minister of Environment and the Minister of Fisheries and Oceans.
 - Develop an Interim Management Plan prior to establishment (includes zoning).
 - A Management Plan must be prepared within 5 years.
 - Management Plans are reviewed every 10 years
 - Advisory committees advise on MP



Photos: Tomas Tomasek

Zoning

- 4.(4) Each NMCA shall be divided into **zones**, which must include at least one zone that fosters and encourages **ecologically sustainable use of marine resources** at least one zone that fully **protects special features or sensitive elements of ecosystems**, and may include other types of zones.



Photo: Mark Hiebert

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Zoning

Eg. Zoning Plan from Australia

- Interim Management Plan tabled before Parliament includes zoning plan 7.(1d)
- Management Plan includes zoning plan 9.(1)
- Regulations – delimitation of zones 16.(1d)
- Regulations – restricting / prohibiting activities 16.(1e)



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Regulations

- Parks Canada does not 'own' the water column, but they will have **clear title to lands**.
- There can be no use, occupation, or disposition of the **'public lands'** **unless it is permitted by the Act** or regulations s12 (a&b)
- 'NO UNLESS YES'**



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Regulations – Leases and Licences

- Leases and Licences over public lands in NMCA's have to be for uses that don't compromise the structure and function of ecosystems.



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Regulations – Fishing Licences

- 15.(2) A fishing licence issued under the **Fisheries Act** is deemed to be a **permit issued under this Act...**
- 15.(3) For greater certainty, the **superintendent** of a marine conservation area may **not amend, suspend or revoke a fishing licence** issues under the Fisheries Act.



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Mitigation of Environmental Damage

- Where possible, civil liability for environmental damage remains under other statutes.
- Section 29 fills the gaps.
- Provision where Minister can direct person to clean up or be liable for clean up expenses.



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Regulation-making Authorities

- o *NMCA Act* is relatively new legislation.
- o Regulatory framework has yet to be established.
- o Section 16(1) of the Act enables establishment of regulations.
- o Regulations must be compatible with ecological sustainable use.



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Photo: Mark Hebert

Regulation-making Authorities

- o Section 16.(1) outlines Canada's regulation-making authorities:
- o Regulations can be put in place for the following:
 - (a) the protection of ecosystems;
 - (b) the protection of cultural, historical and archaeological resources;
 - (c) the management and control of renewable resource harvesting activities;
 - (d) the delimitation of zones;



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Regulation-making Authorities

- (e) restricting or prohibiting activities in an NMCA or in any zones;
- (f) respecting the issuance, amendment, suspension and revocation or permits;
- (g) respecting the determination of fees, rates, rents and other charges;
- (h) authorizing the granting, and the surrender or relinquishment, of leases, licences....



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Regulatory Considerations

- o Is there an existing federal regulation that can be applied?
- o Is a more specific regulation needed?
- o Is there a regulation making authority under the *CNMCA Act* that can be relied on?
- o Should the regulation apply to specific marine conservation areas or to all of them?
- o Have there been consultations with affected coastal communities and aboriginal groups in the development of the regulations?



Photo: Mark Hebert

Local Gov't & Ecologically Sustainable Use

- o Managing for ecologically sustainable use within an NMCA assumes heightened responsibilities.
- o NMCA model provides us with an opportunity to make a difference with respect to oceans management.
- o Cooperative approach is essential to success.



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