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## **Submission to the Standing Senate Committee on Fisheries and Oceans**

### **Re: Bill C-55, An Act to Amend the *Oceans Act* and the *Canada Petroleum Resources Act***

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**SUBMISSION OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
TO THE STANDING SENATE COMMITTEE ON FISHERIES AND OCEANS  
REGARDING  
BILL C-55, AN ACT TO AMEND THE *OCEANS ACT* AND THE CANADA  
*PETROLEUM RESOURCES ACT***

**February 8, 2019**

**Prepared by: Kerrie Blaise and Jessica Karban, Counsel**

**INTRODUCTION**

These are the submissions of the Canadian Environmental Law Association (“CELA”) in relation to the Standing Senate Committee on Fisheries and Oceans’ review of Bill C-55, An Act to amend the *Oceans Act* and the *Canada Petroleum Resources Act* (“Bill C-55”).

CELA welcomes this opportunity to provide submissions to the Standing Senate Committee on Fisheries and Oceans. We strongly support efforts by the Government of Canada to establish a national network of marine protected areas (“MPAs”) in order to actively fulfill its obligations under the United Nations Convention on Biological Diversity (“CBD”) to ensure 10% of marine and coastal waters are protected by 2020. CELA applauds effort by Canada to meet this target given that, upon release of the mandate letter to the Minister of Fisheries, Oceans and Canadian Coast Guard (“DFO”) in 2016, only 1% of Canada’s marine areas from coast to coast to coast was protected.<sup>1</sup>

While we celebrate the establishment of the St. Anns Bank, Hectate Strait and Queen Charlotte Sound Glass Sponge Reefs, and Anguniaqvia Niqiyuam MPAs, a number of improvements still need to be made to Bill C-55, to ensure that MPAs and our oceans are better able to face the triple threat posed by climate change caused warming, deoxygenation and acidification.

As detailed below, CELA submits that in order for 10% of marine and coastal waters to be protected in light of climate stressors and human-caused harm, minimum standards for protection and prohibitions of certain human activities must accompany MPA designations (see Part II, below). CELA also supports the inclusion of new offence provisions, increased maximum fines, the inclusion of minimum penalties, and strengthened sentencing provisions for offences committed under the *Oceans Act* (see Part III, below).

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<sup>1</sup> Jessen, S. et al (2017) “Measuring MPAs in continental North America: How Well Protected Are the Ocean Estates of Canada, Mexico, and the USA?” *Frontiers in Marine Science*, 4, p 279

## **I. BACKGROUND**

CELA is a non-profit, public interest organization that works toward protecting human health, safety and the environment. CELA advocates for comprehensive laws, standards and policies that will protect and enhance public health and environmental quality in Ontario and throughout Canada. Since 1970, CELA has used legal tools, undertaken ground breaking research and conducted public interest advocacy to increase environmental protection and safeguard communities. As a specialty clinic funded by Legal Aid Ontario, we also provide equitable access to justice to those otherwise unable to afford representation for their environmental problems.

## **II. MPAS – PROTECTIONS AND PROHIBITIONS**

### *1. Ecological integrity should be the primary goal for MPAs*

Bill C-55 proposes that “the conservation and protection of marine areas for the purpose of maintaining ecological integrity” be added as a purpose of MPAs under section 35(1) of the *Oceans Act*. While CELA is supportive of this amendment, we recommend that this purpose be a primary goal for MPAs. As drafted, ecological integrity would be one of a number of enumerated grounds upon which MPAs can be designated.

### *2. Minimum levels of protection should be consistent among MPAs*

Under the *Oceans Act*, MPAs are designated by regulation and prescribed measures, such as prohibited activities, are made on a case-by-case basis. Therefore, a minimum level of ecological integrity is not guaranteed. Bill C-55 does not remedy this gap nor ensure consistent levels of protection among MPAs. Therefore, CELA submits minimum protection standards be required, in order to facilitate meeting the definition of ecological integrity, as defined in Bill C-55 which states:

- 35 (1)** For the purpose of paragraph (1)(f), *ecological integrity* means a condition in which
- (a) the structure, composition and function of ecosystems are undisturbed by any human activity;
  - (b) natural ecological processes are intact and self-sustaining;
  - (c) ecosystems evolve naturally; and
  - (d) an ecosystem’s capacity for self-renewal and its biodiversity are maintained.

### *3. Certain activities should be prohibited within MPAs*

Additionally, it is necessary that prohibitions be set out in the *Oceans Act* and not prescribed on an individual basis in regulation. A minimum threshold would provide a consistent level of protections among MPAs, but not preclude more stringent measures or conditions being prescribed by regulation in light of the MPAs unique ecological or cultural features.

CELA supports the inclusion of the following list of prohibitions, as recommended by West Coast Environmental Law in its prior submission on Bill C-55<sup>2</sup> and the recent report by SeaBlue Canada<sup>3</sup>:

- No person shall explore for or exploit hydrocarbons, wind or tidal power, minerals, aggregates or any other inorganic matter, conduct marine finfish aquaculture, or use bottom trawl fishing gear within a marine protected area;
- Extractive and commercial activities should be prohibited, including commercial and recreational fisheries in at least 75 per cent of the area to fully protect the special features or sensitive elements of the marine ecosystem, with the exception of constitutionally-protected rights of Indigenous peoples; and
- Recreational boating and anchoring shall be restricted in sponge and significant benthic areas.

#### 4. *Monitoring the effects of the 'triple threat' and limited land-based sources of pollution*

In order to ensure “the network of marine protected areas covers diverse habitat types, biogeographic regions and environmental conditions,” it necessary that ongoing information-gathering and monitoring occur. This includes documenting the biodiversity attributes of MPAs, their culture, and/or spiritual significance and evaluating the effectiveness of management strategies. It also requires more frequent fish stock assessments, improving our knowledge of marine habitats, and ensuring the inclusion of traditional ecological knowledge science in the monitoring of effects.

As there is limited knowledge of how the triple threat to oceans will affect the biodiversity of Canada’s coastal and marine waters, monitoring must expressly require consideration of climate effects. For instance, a time series assessing ocean acidification should be maintained and monitoring areas established in important habitats.<sup>4</sup>

Progress must also be made to reduce land-based sources of pollution. This requires cohesion among Canada’s chemicals management framework and waste strategies in order to reduce chemical and plastic-based pollutants entering the oceans.

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<sup>2</sup> West Coast Environmental Law (November 2017) “Submission to the Standing Committee on Fisheries and Oceans Regarding Bill C-55, An Act to amend the *Oceans Act* and the *Canada Petroleum Resource Act*”

<sup>3</sup> Travis Aten and Susanne Fuller (2019) “A Technical Review of Canada’s Other Effective Area-Based Conservation Measures: Alignment with DFO Guidance, IUCN-WCPA Guidance and CBD SBSTTA Guidance” SeaBlue Canada, online: [https://seabluecanada.org/wp-content/uploads/2019/01/SeaBlue-OECM-Report-FinalJan17\\_WEB.pdf](https://seabluecanada.org/wp-content/uploads/2019/01/SeaBlue-OECM-Report-FinalJan17_WEB.pdf)

<sup>4</sup> Report by the Ocean Acidification sub group of the Science Advisory Council (2018) “Recommendations to Inform a UK Ocean Acidification Monitoring Strategy,” online: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/730461/defra-sac-oa-report-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730461/defra-sac-oa-report-2018.pdf)

### **III. OFFENCES AND PUNISHMENT**

#### *1. New offences*

CELA supports the inclusion of new offence provisions under the *Oceans Act* in Bill C-55. Significantly, a broader range of conduct will now count as an offence, including engaging in prohibited activity within MPAs designated by ministerial order. However, as explained in detail above, one significant shortcoming of Bill C-55 is the lack of outright prohibitions on harmful activities such as oil, gas, and mineral exploration and development.

CELA supports the application of the *Oceans Act* offence provisions to ships and its owners, operators, masters and chief engineers.

#### *2. New Fine Structure*

CELA commends the increased maximum fines under the *Oceans Act* in Bill C-55. They are in line with maximum penalties for offences contained in other federal environmental and conservation statutes governed by the *Environmental Enforcement Act*. It is important to ensure that fines under the *Oceans Act* are sufficient to achieve both specific and general deterrence.

CELA also supports the provisions in Bill C-55 that introduce minimum fines. CELA has advocated minimum fines since the early 1980s for offences resulting in convictions in environmental cases. The use of minimum fines does not restrict the exercise of judicial discretion, but instead helps structure the exercise of such discretion within an appropriate range.

CELA also supports the following offence and fine provisions of Bill C-55 set out in sections 39.64(1)-(4):

- a person may be convicted for separate offences for each day that the offence is committed or continued
- despite the maximum penalty specified in s.39.6, fines can be cumulative if an offence involves more than one animal, plant, other organism or object
- additional fines may be set if a person acquired any property, benefit or advantage as a result of the commission of the offence
- a conviction under s.39.6 of the *Oceans Act* is deemed to be a second or subsequent conviction if a person has been previously convicted under any federal or provincial Act that relates to environmental or wildlife protection or conservation

CELA has long advocated that environmental fine and penalty regimes explicitly include mechanisms for removing the economic benefit of non-compliance, capturing the environmental harm caused by the violation, and history of non-compliance. CELA also applauds the amendment

in Bill C-55 that requires all fines received for the commission of an offence under the *Oceans Act* to be credited to the Environmental Damages Fund for the specific purpose of conservation, protection or restoration of MPAs.

CELA recommends that a draft Enforcement and Compliance Policy for the *Oceans Act* be released as soon as possible.

### 3. *Strengthened Sentencing Provisions*

CELA commends the strengthened sentencing provisions for offences committed under the *Oceans Act*. In particular, CELA supports the requirement that courts consider aggravating factors and the gravity of each aggravating factor when determining the amount of the fine. CELA supports the list of aggravating factors proposed in Bill C-55, especially those which capture the environmental harm caused by a violation, the offender's history of non-compliance with other environmental and conservation statutes, and the removal of the economic benefit of non-compliance.

CELA also supports the new order powers in Bill C-55 which are available to a court on sentencing, notably environmental monitoring, conservation, protection or restoration of MPAs and research.

## **CONCLUSION**

Canada must demonstrate leadership not only in meeting the CBD target, but ensure ambitious action in protecting our oceans, from coast to coast to coast. In order to realize this goal, CELA submits that minimum standards of protection and prohibitions of certain human activities must accompany MPA designations. CELA also supports the inclusion of new offence provisions, increased maximum fines, the inclusion of minimum penalties, and strengthened sentencing provisions for offences committed under the *Oceans Act*.

Yours truly,

## **CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



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