



# Presentation to Fisheries and Oceans Canada (DFO)

National Advisory Panel on Marine Protected Areas Standards

Olaf Jensen  
National Manager  
Protected Areas Program

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**Canadian Wildlife Service**  
**Environment and Climate Change Canada**



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### Mandate of ECCC and the Canadian Wildlife Service:

- Protected areas are established in **Key Biodiversity Areas** for the recovery of **species at risk** and the conservation of **migratory birds** and **other wildlife**.
- Further, our vision is that National Wildlife Areas and Migratory Bird Sanctuaries conserve key areas of biodiversity for the benefit of wildlife and the long term benefit of all Canadians and encourage public understanding and participation in the conservation of wildlife and habitat.

### History and Status of ECCC Marine Protected Areas:

- From 1887 until present day 54 National Wildlife Areas and 92 Migratory Bird Sanctuaries have been established. EC's Protected Areas cover 12.4 million hectares (an area twice the size of Nova Scotia) and comprise 1.1% of Canada's terrestrial area and inland waters.
  - i. 54 National Wildlife Areas (988 111 hectares)
  - ii. 92 Migratory Bird Sanctuaries (11 465 975 hectares)
  - iii. Totalling over 12.4 million hectares (marine & terrestrial portion)
- The marine portion of existing National Wildlife Areas and Migratory Bird Sanctuaries covers 19,616km<sup>2</sup> of Canada's marine and coastal environment (0.34% of Canada's coastal and marine area). The proposed Scott Islands marine National Wildlife Area would protect a further 11,514km<sup>2</sup> (0.20%).

### Historical role and evolution of the ECCC Protected Areas Program

- The *Canada Wildlife Act* (1973) and the *Migratory Bird Convention Act* (1917) were the first acts in Canada to specifically enable the creation of protected areas whose primary purpose was wildlife and habitat conservation. National Wildlife Areas and Migratory Bird Sanctuaries fill an important niche by prioritizing the protection of habitat for species at risk and migratory birds. Many provincial, territorial and federal protected areas are established for purposes of recreation, tourism, watershed protection, or to protect areas representative of Canada's natural beauty. These areas have ancillary benefits for biodiversity conservation. ECCC's Protected Areas primary purpose is biodiversity conservation. This role is unique.
- The *Canada Wildlife Act* was the first Act in Canada to specifically enable the creation of protected areas whose primary purpose was wildlife and habitat conservation. The federal leadership role was clear: the need for habitat protection for wildlife conservation had been acknowledged and the federal government took the lead in creating an Act that would enable the creation of a network of protected areas. However, since the promulgation of the *Canada Wildlife Act* in 1973 every jurisdiction in Canada (the federal government, provinces and territories) has legislative tools that enable the creation of protected areas. These are diverse and include national parks, provincial parks, wildlife areas, conservation

areas, heritage rangelands, private nature reserves, Indigenous protected areas, sanctuaries, and marine parks to name but a few. At present count, there are 53 separate Acts that are used, or could be used to establish 77 different types of protected areas.

- The diverse range of protected areas in Canada are nearly completely captured by and categorized within the IUCN Protected Areas Management Categories according to their management objectives.

### Evolution and purpose of Migratory Bird Sanctuaries

- Migratory Bird Sanctuaries were established at a time when the most important threat to conservation was overhunting. Many of the early Migratory Bird Sanctuaries in Canada were established to protect birds, nests, and eggs from direct threats: hunting for meat, for the feather trade, and egg harvest for food and for oölogy.

i.	Last Mountain Lake	1887	“wild fowl”
ii.	Betchouane MBS	1925	Eider ducks
iii.	Corossol Island MBS	1937	Eider ducks

- For almost 50 years, Migratory Bird Sanctuaries were the only regulatory tool available federally to protect wildlife and habitat. When important habitat for migratory birds was recognized as such by government scientists in Nunavut, for example, it was protected under the *Migratory Bird Convention Act*, including:

i.	Queen Maud Gulf MBS	1961	62,928 km <sup>2</sup>
ii.	Bylot Island MBS	1925	12,827 km <sup>2</sup>
iii.	Banks Island MBS	1961	20,199 km <sup>2</sup>

- A national habitat program was implemented by the Government of Canada, through the Canadian Wildlife Service, in 1966. This program responded to widespread national concern regarding the loss of important wildlife habitat throughout Canada. Originally restricted to wetlands important for migratory birds, the system now includes areas that are important and unique for other wildlife species. For example:

i.	CFB Suffield NWA	2003	458 km <sup>2</sup>
ii.	Portobello Creek NWA	1995	22 km <sup>2</sup>
iii.	Akpait NWA	2010	791 km <sup>2</sup>
iv.	Ninginganiq	2010	3,364 km <sup>2</sup>
v.	Polar Bear Pass	1985	2,636 km <sup>2</sup>

### Migratory Bird Sanctuaries

- Where MBSs are located on federal land, Environment and Climate Change Canada is responsible for the management and protection of migratory birds, nests, eggs and habitat. Where MBSs are located on provincial land, Environment and Climate Change Canada is responsible for the protection of migratory birds and their nests, while the chief game officer of the province is responsible for the management of habitat. Where MBSs are located on private or municipal land, Environment and Climate Change Canada is

responsible for the protection of migratory birds and their nests. Habitat management is the responsibility of the landowner.

- While Migratory Bird Sanctuaries can still be established, and may be contemplated for establishment in the future, the Canada Wildlife Act has become the primary protected area habitat conservation tool of Environment and Climate Change Canada.

### Marine National Wildlife Areas Legislative Framework

- The *Canada Wildlife Act* enables the establishment of protected marine areas in any part of the sea that forms part of the internal waters of Canada, the territorial sea of Canada, or the Exclusive Economic Zone of Canada.
  - i. The *Wildlife Area Regulations* are used to create National Wildlife Areas that include land, inland waters and marine waters in the territorial sea, within the 12 nautical mile limit.
  - ii. Unique regulations under the *Canada Wildlife Act* are used to create marine National Wildlife Areas that fall within the Exclusive Economic Zone of Canada, as in the case with the proposed Scott Islands marine National Wildlife Area.
- Note that the *Wildlife Area Regulations* can only be used to manage a public lands which, as defined in the *Canada Wildlife Act*, does not include the Exclusive Economic Zone of Canada. While legislative amendments are being contemplated, this is partly the reason why separate (unique) regulations are required for wildlife areas in the EEZ.

### National Wildlife Area Selection Criteria

- The area supports at least 1% of the Canadian population of a species or subspecies of migratory bird or species at risk for any portion of the year where total populations are known.
- The area supports an appreciable assemblage of species or subspecies of migratory birds or species at risk, or an appreciable number of individuals of any one or more of these species or subspecies where total populations are not known or the assemblage represents a regionally significant area.;
- The marine or terrestrial area has been identified as critical habitat for a listed (COSEWIC) migratory bird or other species-at-risk population
- The area is a rare or unusual wildlife habitat of a specific type in a biogeographic region, or has special value for maintaining the genetic and ecological diversity of a region because of the wide range, quality and uniqueness of its flora and fauna.

- The area possesses a high potential for restoration or enhancement, now or in the future, such that wildlife populations could be increased or managed to meet national objectives

### Establishment Process

- Site Identification and Selection: A proposed site is assessed against the selection criteria. Note that anyone can propose a National Wildlife Area.
- Feasibility Assessment including an ecosystem assessment and environmental assessment as well as a socio-economic assessment.
- Securement and Agreement: lands are purchased, transferred or designated.
- Regulatory Process

### Regulations, Prohibitions, and Instruments

- Department of Environment Act: The powers of the Minister under the *Department of the Environment Act* include the preservation and enhancement of the quality of the natural environment and renewable resources including migratory birds and other non-domestic flora and fauna. The Act also empowers the Minister to coordinate policies and programs of the Government of Canada respecting the preservation and enhancement of the quality of the natural environment.
- Canada Wildlife Act: The *Canada Wildlife Act* enables the Government of Canada to establish National Wildlife Areas (on land and in the ocean) and Cooperative Wildlife Management Areas for the purpose of conserving migratory birds and other wildlife. The *Canada Wildlife Act* also empowers the Minister to:
  - i. Undertake, promote, and recommend measures for the encouragement of public cooperation in wildlife conservation and interpretation;
  - ii. Initiate conferences and meetings in respect of wildlife research, conservation and interpretation;
  - iii. Undertake programs for wildlife research and investigation and establish and maintain laboratories and other necessary facilities for that purpose;
  - iv. Establish advisory committees and appoint members;
  - v. Coordinate and implement wildlife policies and programs in cooperation with any government, and:
  - vi. Establish agreements with other governments for research, conservation and interpretation and make payments for such programs.
- The CWA was amended in 1994 to clarify that the Governor in Council can establish protected marine areas in any area of the sea that forms part of the internal waters, territorial seas or exclusive economic zone of Canada.

- **Wildlife Area Regulations:** the General Prohibitions in section 3(1) of the Regulations effectively prohibit all activities in National Wildlife Areas; i.e. no person shall:
  - i. Hunt or fish
  - ii. Possess a firearm
  - iii. Possess an animal
  - iv. Damage, destroy or remove a plant
  - v. Carry on any agricultural activity
  - vi. Allow a domestic animal to run at large
  - vii. Swim, picnic, or camp or carry on any recreational activity
  - viii. Operate a conveyance
  - ix. Destroy or molest animals, nests or eggs
  - x. Remove or deface any structure
  - xi. Carry on any commercial or industrial activity
  - xii. Disturb the soil
  - xiii. Dump or deposit any material that would degrade the environment
- However, a permit may be issued for any activity so long as that activity will not “interfere with the conservation of wildlife”. Regulatory amendments are proposed and policy guidance is available that explains what might constitute interference. Also, regulatory changes have been proposed that would replace the existing system of “notices” with explicit authorizations in the Regulations, authorizing certain activities in specific National Wildlife Areas.
- **Other Regulations:** currently, as in the case with the proposed Scott Islands marine National Wildlife Area, specific regulations are developed for marine National Wildlife Areas that fall within the EEZ. Reflecting the unique jurisdictional environment in the oceans, the regulatory strategy proposes that the administration of activities such as fishing and marine safety and transportation within the boundaries of the NWA remain under the authority of Fisheries and Oceans Canada (DFO) and Transport Canada, respectively. Environment Canada will develop agreements with these departments--using a collaborative approach to the analysis, management, monitoring and enforcement of regulations regarding activities within this marine NWA--to meet the conservation objectives for the area.

## Vision and Guiding Principles

- **Protection First:** Protection of wildlife and its habitat is the primary purpose of a protected area. All activities on protected areas, on the land or at sea, have to be considered within this priority. Protection actions are aligned to the conservation objectives of the area, which means actions that do not impact the conservation goals of the area can occur.
- **Science and knowledge at the Core of Protected Areas:** Knowledge of the wildlife, habitats and ecosystems to be conserved forms the core of the foundation while social, economic

and political considerations along with Indigenous | traditional knowledge provides additional layers of important contextual information.

- **Complement other Conservation Actions:** The Environment and Climate Change Canada network is designed to complement the full range of Canadian protected areas and stewardship arrangements.
- **Adapt to Future Ecological Change:** The protected areas network is designed and managed to adapt to future ecological change including changes expected to occur as a result of global warming.
- **Ecosystem Based Management:** Protected areas are considered integral parts of broader landscapes managed by individuals and organizations, and to which they also provide ecological goods and services.
- **Working with Others:** Environment and Climate Change Canada works with Indigenous | peoples, communities, partner organizations and other governments and federal departments to enhance compliance and protection, to complement capacities and to foster education about wildlife conservation.

### **Indigenous Co-Management and Reconciliation**

Establishment and management of National Wildlife Areas and Migratory Bird Sanctuaries respect Aboriginal rights and traditional practices including access to and traditional harvest within these areas. Further, and more importantly, ECCC manages these protected areas together with Indigenous peoples:

- Eight Migratory Bird Sanctuaries and five National Wildlife Areas are managed cooperatively in the Nunavut Settlement Area under the terms of the Nunavut Agreement and an Inuit Impact and Benefit Agreement.
- Nisutlin River Delta National Wildlife Area is co-managed with the Teslin Tlingit peoples under the terms of the Teslin Tlingit Final Agreement.
- When established, Scott Islands marine National Wildlife Area will be cooperatively managed with the Quatsino and Tlatlasikwala First Nations.

Approximately 85% of the area of marine and terrestrial National Wildlife Areas and Migratory Bird Sanctuaries are categorized as IUCN Category Ib protected areas (“Wilderness Areas”).

Table 1. Canadian terrestrial and marine protected areas in by IUCN protected area category.

Biome	IUCN	Count	Km <sup>2</sup>	By area	By number
Terrestrial	Ia	37	2910	2.8%	30.6%
	Ib	17	89290	85.1%	14.0%
	II	6	11127	10.6%	5.0%
	III	19	141	0.1%	15.7%
	IV	33	1273	1.2%	27.3%
	V	2	21	0.0%	1.7%
	VI	7	109	0.1%	5.8%
Marine	Ia	23	763	0.7%	19.0%
	Ib	15	16939	16.2%	12.4%
	II	2	1777	1.7%	1.7%
	III	9	35	0.0%	7.4%
	IV	5	79	0.1%	4.1%
	VI	1	5	0.0%	0.8%

## Budget 2018

To support Canada's biodiversity and protect species at risk, **the Government of Canada proposes to make historic investments totalling \$1.3 billion over five years.** This investment will contribute \$500 million from the federal government to create a new \$1 billion Nature Fund in partnership with corporate, not-for profit, provincial, territorial and other partners. In collaboration with partners, the Nature Fund will make it possible to secure private land, support provincial and territorial species protection efforts, and help build Indigenous capacity to conserve land and species, for our benefit and the benefit of future generations. The remaining funding will:

- Increase the federal capacity to **protect species at risk** and put in place new recovery initiatives for priority species, areas and threats to our environment.
- **Expand national wildlife areas and migratory bird sanctuaries.**
- **Increase the federal capacity to manage protected areas,** including national parks.
- Continue implementation of the *Species at Risk Act* by supporting assessment, listing, recovery planning and action planning activities.
- **Establish a coordinated network of conservation areas working with provincial, territorial and Indigenous partners.**

## Specific Examples

- Ninginganiq
  - i. Established in 2010 at the request of local Inuit peoples and created as a result of the Nunavut Agreement and an Inuit Impact and Benefit Agreement.
  - ii. Isabella Bay (Ninginganiq) is the largest National Wildlife Area in Canada.
  - iii. The Ninginganiq NWA provides important marine habitat, the interplay of ocean and wind currents with the shallow banks off the coast of Isabella Bay, deep troughs further offshore, ocean and wind currents, creating ideal conditions for Bowhead Whales. Up to 100 Bowheads have been recorded at one time in Isabella Bay, making this the single largest known concentration for this species anywhere in Canada.
  - iv. Access to, and activities within this National Wildlife Area are prohibited and any requests for access must be forwarded to the Area Co-Management Committee for consideration.
  - v. Access to Ninginganiq NWA is restricted except for Nunavut beneficiaries. For all non-beneficiaries, a permit must be obtained to either access or conduct any type of activity in the NWA. Activities that may be permitted will be in accordance with the conservation objectives of the NWA management plan.
  
- Scott Islands
  - i. The proposed Scott Islands NWA supports the highest concentration of breeding seabirds on Canada's Pacific coast, including about half of the world's Cassin's Auklet, 90% of Canada's Tufted Puffin, 95% of western Canada's Common Murre, and 7% of the global Rhinoceros Auklet population.
  - ii. These percentages clearly exceed the threshold criteria of 1% of the Canadian population of these species. Second, 5 species of birds and 19 other species listed under SARA are also found in this area.
  - iii. Finally, the area is a unique wildlife habitat: the waters that surround the Scott Islands include the transition zone between the Alaska and California currents, which leads to conditions favorable to very high marine productivity. These characteristics contribute to exceptional conditions both for seabirds and commercial fisheries.
  - iv. The development of the proposed regulated area has been consulted on over 20 years and has involved the province of BC, FNs, ENGOs, industry, and local communities.
  - v. The regulations would prohibit disturbing, damaging, destroying or removing wildlife or wildlife habitat; dumping or discharging waste material; flying over the area below 1,100 metres and being within 300 metres of Triangle, Sartine or Beresford Islands. Fishing for three key forage fish would be prohibited (sand lance, Pacific Saury, and krill).
  - vi. Additional complementary measures would prohibit ground-contact fishing (bottom trawling) in 80% of the National Wildlife Area, salmon gill-netting, in addition to

restrictions on other gear types that may pose a risk to the wildlife in the National Wildlife Area.

While we have support for the proposed mNWA from the DFO and TC, BC, FNS, and industry, there has been some debate raised by the ENGOs who are concerned that there are not enough protections in place to count it as a protected area. They developed conditions for their support including demands for stable funding, adjustments to the boundary, science-based management, relinquishment of oil and gas rights, a mitigation plan for shipping and transportation, further reductions in the extent and types of fishing authorized, eradication of introduced predators from the islands, the development of a management plan, and no recognition of the area as “protected”.

### Scott Islands as a protected area

Protected areas in Canada are becoming more and more collaborative and multi-jurisdictional. Canada has a long history of establishing protected areas under a single jurisdiction and managing them under a single regulatory tool. This is changing. For example, Indigenous peoples have expressed a desire to create and manage Indigenous protected areas, and be supported by government rather than being engaged in some ancillary way in co-management and they want to add their own layers of protection. In the case of Scott Islands, ECCC has taken another step in this new direction. Rather than wresting control from other governments and jurisdictions, ECCC proposes to create a protected area using regulatory and non-regulatory tools assembled from all relevant partners. This partnership approach is new and collaborative. This partnership approach has however been criticized by some as not resulting in measures that qualify it as a protected area. However:

- Scott Islands has a clearly defined geographical space with a demarcated boundary. It comprises 11,546 km<sup>2</sup> of entirely marine environment, composed of internal waters, the territorial sea, and the Exclusive Economic Zone (EEZ) of Canada.
- When established, Scott Islands will be recognized in law and regulation, both under the Canada Wildlife Act and the Fisheries Act.
- Scott Islands will be dedicated to conservation and managed collaboratively with other federal departments with management authority in the area (DFO, TC, and NRCan), the Province of BC, and Quatsino and Tlatlasikwala First Nations. A draft management plan for the area will be collaboratively developed with partners and stakeholders.
- Protection of the area will occur through legal and other effective means for the long-term: the marine NWA will be established, and associated regulations enacted, under the Canada Wildlife Act. Fishing and shipping activities will continue to be managed under the Fisheries Act and Canada Shipping Act, and their associated regulations, respectively. There is a federal and provincial moratorium on oil and gas exploration and development in the Pacific offshore. As a result, there is no oil and gas activity within the marine NWA.

- When established, Scott Islands marine National Wildlife Area will be an IUCN Category VI protected area, noting that the primary objective of the protected area applies to at least three-quarters of the protected area (the “75% rule” which is discussed in the 2008 IUCN protected areas guidelines and the 2012 “Guidelines for Applying the IUCN Categories to Marine Protected Areas”).

### Concluding remarks

- Environment Canada uses and applies the IUCN Protected Areas Categories Guidelines and the associated IUCN Guidance on Applying the Protected Areas Categories to Marine Protected Areas.
- The Pathway to Canada Target 1 initiative is providing additional guidance with respect to the interpretation of the IUCN guidance for both terrestrial and marine protected areas.
- Marine protected areas can have both broad and specific conservation objectives. Individual protected areas can have objectives to conserve biodiversity as a whole or can have conservation objectives targeting single-species or habitats, impose seasonal restrictions in order to achieve protection objectives (management category IV), or allow non-industrial sustainable activities to occur in a portion of the protected area (management category VI), provided that these activities do not negatively impact the overall conservation of nature.
- CWA-NWAs and MBCA- MBS currently conserve almost 2 million hectares of marine areas, and are set to conserve more than a million additional hectares.
- National Wildlife Areas and Migratory Bird Sanctuaries play an important role in marine conservation, and an important tool in broader MPA networks

Olaf Jensen  
National Manager  
Protected Areas Program  
Canadian Wildlife Service  
Environment and Climate Change Canada  
[Olaf.jensen@canada.ca](mailto:Olaf.jensen@canada.ca)  
(819)938-4025