COMMUNITY AND INDIGENOUS MARINE PROTECTED AREAS – A PUBLIC INTEREST LAW PERSPECTIVE FROM COAST TO COAST

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ECELAW envisions a future where innovative and effective environmental laws, and the fair application of those laws, provide Atlantic Canadians with a clean, healthy environment, which will make a positive contribution to the quality of life of its present and future inhabitants and visitors.
Communities, Conservation, and Livelihood

May 28, 2018

Georgia Lloyd-Smith

WEST COAST Environmental Law
INDIGENOUS LAW
What are MPAs?

• Defined area of the ocean
• Legal Protection
• Long-term Management
• Primary purpose is conservation of nature and associated ecosystem services and cultural values.
Background

• Convention on Biological Diversity, 1992
• Oceans Act, 1997
• Federal Commitment, 2015
  • From 1% in 2016 to 10% by 2020
• Network of MPAs
  • National Marine Conservation Areas
  • Other Effective Area-based Conservation Measures (Marine Refuge)
  • Oceans Act MPAs
Oceans Act – Bill C-55

Will...
- Interim MPAs by MO
- Precautionary Principle

Should...
- Set Minimum protection standards
- Prohibit certain activities
- Make ecological integrity the top priority.

Government 5 Point Plan
1. Finish What Was Started
2. Protect Pristine Areas
3. Protect Areas Under Pressure
4. Advance Other Effective Area-Based Conservation Measures
5. Establish Marine Protected Areas Faster
MPA Identification and Consultation Process

Oceans Act MPAs are created in a five-step process:

1. Identify Area of Interest
   - Advisory committee receives input
   - Identifies area appropriate for MPA designation

2. Assess Area of Interest
   - Ecological, biophysical, social, cultural, economic impacts assessed
   - Interested and affected parties to contribute
3. Consultation to establish Regulatory Intent
   - Best available science
   - Traditional and local knowledge
   - Community-based monitoring

4. Create regulations and designate the MPA
   - Legal protection, prohibition
   - Ongoing management
   - Exceptions

5. Manage MPA
   - Monitoring
   - Enforcement
MPA Regulation Example

Basin Head MPA (PEI)

• Sets out specific area for protection
• Lists prohibited activities
  • Do not disturb, destroy or damage marine organisms.
  • Do not undertake activities that disturb, destroy or damage marine organisms.

• Exceptions
  • Despite prohibitions any ‘excepted’ activity can be carried out.
  • Any scientific or educational activity with approval.
Consultation Challenges

• **Concerns**
  - Displacement of communities
  - Lack of access for recreational activities (including ceremonial)
  - Compensation for loss of economic opportunity
  - Oil and gas exploration and development
  - Uncertainty about, and lack of, enforcement

• **Challenges**
  - Distrust of government
  - Uncertainty due to lack of consistency
  - Lack of transparency
  - Conflicting statements
  - Lack of capacity to participate
  - No time for meaningful dialogue

Photo Credit: Timothy Boudreau
MPAs are Making Headlines on the East Coast

“Ottawa considers dozens more marine protected areas in Maritimes: Maps sent to CBC reveal areas under consideration that have not been made public” May 10, 2018

“Concern and confusion: Premier slams logic behind marine protected area choices” May 4, 2018

“Premier wants Ottawa to permit drilling in restricted marine areas” May 3, 2018

“Uncertainty surrounding marine protected areas concerns N.S. seaweed company” April 25, 2018

“Proposed no-fish zones in Eastern Shore could mean job losses, minister fears” April 19, 2018

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Offshore Oil & Gas Exploration

• Laurentian Channel draft MPA Regulations in June 2017 allowed oil and gas activity in 80%
  • Government appoints National Advisory Panel on marine protection standards, April 2018

• CNSOPB Call for Bids in April overlaps with Western Emerald Banks Conservation Area (the Haddock Box)
  • Set aside by federal and provincial Ministers May 23, 2018.

• CNLOPB Call for Bids in the Northeast Newfoundland Slope Marine Refuge
  • 'Perfectly reasonable' to drill for oil in area closed to fishery, Liberal MP says
IUCN clearly indicates that oil and gas activities are not compatible in any conserved area and will not lead to the conservation of biodiversity.
Addressing the Challenges

More transparency, better access to information, earlier and more open engagement, enhancing capacity, enabling community leadership and setting legal criteria will facilitate understanding and certainty for communities, industries and citizens; diffusing anger, resentment and resistance.
Improving the Process

• Restorative Consultation
  • Mutually respectful, fair and equitable.

• Dispute Resolution
  • Peaceful, open mediation

• Legally-based community management
  • Legal tools to facilitate community led processes

• Capacity Building
  • Noted difference between east and west coast

• Recognition of Indigenous rights
Minimum Protection Standards

• No oil and gas activity
• No bottom trawling
• No commercial-scale benthic disturbing activities
• No open-net pen aquaculture
• No undersea mining.

Apply to all sites counting towards Canada’s marine protection targets.
Summary

Community Engagement and Legally-based Standards

• Increase certainty & reduce confusion.
• Improve governance.
• Reduce regulatory reviews and legal challenges.
• Build trust between stakeholders and upholds public trust.
• Allows Canada to show leadership and compare its efforts to others.
Co-governance of MPAs

- Equal power sharing
- Indigenous laws and governance upheld
- 2-eyed seeing
- Adequate funding
Gwaii Haanas

- Haida Protected Area
- Equal representation on board
- Application of Haida law
- Agree to disagree on ownership
Haida Laws

Yahguudang or Yakguudang - Respect

‘Laa guu ga kanhllns - Responsibility

Gina ‘waadluxan gud ad kwaagiida - Interconnectedness: Everything depends on everything else

Giid tll’juus - Balance: The world is as sharp as the edge of a knife

Gina k’aadang.nga gii uu tl’ k’anguudang - Seeking wise counsel
Indigenous Protected and Conserved Areas
“In effect, because of their attachment to, and dependence on the land, Indigenous peoples have been establishing their own protected areas for millennia.”

- Steven Nitah, Lultsel K’e Dene, Indigenous Leadership Initiative
Indigenous Guardians
Why does law matter?

• Law as our foundation

• Rising tide floats all boats

• Reconciliation?
Questions?

• What kind of process do you see as viable for community and indigenous led MPAs?
• What are methods or ways that trust can be re-built or created?
• How are the relationships between stakeholders strengthened and improved?
• What kind of tools are needed by communities for creation and management of MPAs?
• What capacity is needed by communities – Money, information, technology, etc?
• What are the community concerns?
• How can we get more/better community support?
• What do you see as successful elements of a community-led or Indigenous led MPA?
• What is NOT working?
Conclusions

- Co-governance in MPAs required by law
- Opportunity for Canada to learn from Indigenous
Miscellaneous

• Opportunity –
• Real concerns on all three coasts – don’t suggest to minimize them
  • Ie. oil and gas in Atlantic
  • Ie. overfishing on all three coasts; problems with licenses and quotas
• Circle back to re-storying – taking Indigenous nations seriously as governments establishes a different foundation for all of us; no need to fear it; embrace; diversity makes us stronger.
Deepening community-based capacity to articulate, revitalize, and apply Indigenous law to environmental decision-making

2017-2018 Call-out open now!

Apply by March 17: wcel.org/relaw
Strong Protection most effective

- Benefits of fully-protected areas (marine reserves) greater than in areas with only partial protection

Protection Standards for MPAs

“[a]ny environmentally damaging industrial activities and infrastructural developments, with the associated ecological impacts and effects, are not compatible with MPAs”
(IUCN World Commission on Protected Areas, 2018)

“prohibit environmentally damaging industrial activities and infrastructure development in all IUCN categories of protected area”
(IUCN World Conservation Congress Motion 026, 2016)
Legal Obligations

Law is critical factor for MPA establishment and management.

- Guides decision-makers and processes.
- Creates obligations, standards, and accountabilities.
• The Oceans Act should be amended to include a prohibition on all industrial activities within MPAs
Protection Standards for MPAs

• National Marine Conservation Areas Act:

13. No persons shall explore for or exploit hydrocarbons, minerals, aggregates or any other inorganic matter within a marine conservation area.

• Standing Committee on Environment and Sustainable Development unanimously recommended “minimum conservation standards of protection for each category of federal protected area to meet accepted international standards”
Movement in Canada on Protection Standards

- *Oceans Act* amendments
- Federal government intends to establish “a floor of basic protections” to apply to all MPAs
- National Advisory Panel on Marine Protected Area Standards and accepting public submissions.
Laurentian Channel MPA

- Public input makes a difference
- >40,000 letters

(Hakai Magazine, 2017)