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Ms. Caroline Ladanowski
Director, Wildlife Management and Regulatory Affairs Division,
Canadian Wildlife Service, Department of the Environment, Gatineau, Quebec K1A 0H3
Sent via email: caroline.ladanowski@canada.ca

January 25, 2017

Dear Ms. Caroline Ladanowski:

Re: Submission on the Proposed Regulations for the Scott Islands Marine National Wildlife Area Published in the *Canada Gazette*, Part I, December 31, 2016

Please accept the following submissions on the proposed regulations for the Scott Islands Marine National Wildlife Area.

West Coast Environmental Law Association (WCELA) is dedicated to safeguarding the environment through law. Since 1974 our staff lawyers have successfully worked with many parties, including all levels of government, to develop proactive legal solutions to protect and sustain the environment. Our marine program seeks to strengthen Canada's legal framework for ocean conservation.

Summary

We applaud the government's efforts to increase the amount of marine space dedicated to conservation, and welcome the introduction of Canada's first marine National Wildlife Area (mNWA). In order to truly celebrate this precedent-setting new designation, we recommend that the regulations be significantly strengthened, so that permitted activities in designated Marine Protected Areas (MPAs) are compatible both with the purposes for which they are established and with Canada's marine conservation objectives. WCEL recommends implementing consistent minimum standards of protection for all designated MPAs in Canada, and submits that the proposed regulations for the Scott Islands mNWA do not achieve minimum protection standards. Amending the regulations to conform to internationally accepted best practice will set a standard for all future designations of this type and can influence future designations of other MPAs in Canada.

Marine Conservation Targets - Quality AND Quantity

In June 2016, the federal government reaffirmed its commitment to reaching Aichi target 11 goals

by protecting 5% of Canada’s marine and coastal areas by 2017, and 10% by 2020¹. Achieving these targets will require a significant increase in the rate of designations of MPAs². It is therefore critical that strong regulatory standards are in place to ensure that the level of protection and management effort afforded to these areas achieves conservation objectives as well as spatial targets³.

Inconsistencies between conservation objectives and permitted human activities in MPAs have been examined nationally⁴ and along the coast of British Columbia⁵. Determining the prohibitions and allowable activities in an MPA on a site-by-site basis⁶ results in a lack of minimum protection levels⁷.

The proposed “Scott Islands Protected Marine Area Regulations” and “Notice of Intent to establish the proposed Scott Islands Protected Marine Area” were published on December 31, 2016 for public comment⁸. While the conservation objective for the protected marine area is to “conserve migratory seabirds, species at risk, and the habitats, ecosystem linkages and marine resources that support these species”⁹, the activities permitted by the proposed regulations for the Scott Islands area, such as most commercial fisheries, all forms of shipping, and oil and gas exploration, highlight the absence of minimum protection standards.

¹ DFO. 2016. ‘Meeting Canada’s Marine Conservation Targets’ Accessed at <<http://www.dfo-mpo.gc.ca/oceans/conservation/index-eng.html>>

² Canada Gazette. 2016. Scott Island Protected Marine Area Regulations. Accessed at <<http://www.gazette.gc.ca/rp-pr/p1/2016/2016-12-31/html/reg1-eng.php>> Regulations note that currently 0.9% of Canada’s marine waters are under protection.

³ Agardy, T., Claudet, J., & Day, J.C. 2016. “Dangerous Targets” revisited: Old dangers in new contexts plague marine protected areas. *Aquatic Conservation: Marine and Freshwater Ecosystems*, 26, 7–23. <https://doi.org/10.1002/aqc.2675>

⁴ CPAWS. 2015. Dare to be Deep: Annual report on Canada’s progress in protecting our ocean.

⁵ Ban, N. C., McDougall, C., Beck, M., Salomon, A. K., & Cripps, K. 2014. Applying empirical estimates of marine protected area effectiveness to assess conservation plans in British Columbia, Canada. *Biological Conservation*, 180, 134–148. <https://doi.org/10.1016/j.biocon.2014.09.037>. Robb, C. K., Bodtker, K. M., Wright, K. 2015. Marine Protected Areas in the Canadian Pacific: Do They Fulfill Network Criteria? *Coastal Management*, 43(3), 253–269. <https://doi.org/10.1080/08920753.2015.1030306>

⁶ The 2014 Canada-BC MPA Network Strategy states that “Existing MPAs were designated under an ad-hoc approach using a variety of federal or provincial legislative tools and provide varying levels of protection to a range of different values.” (p.2)

⁷ Jamieson, G.S., and Levings, C.O. 2001. Marine protected areas in Canada—implications for both conservation and fisheries management. *Canadian Journal of Fisheries and Aquatic Sciences*, 58, 138–156. DOI:10.1139/cjfas-58-1-138

⁸ Department of Environment and Climate Change Canada. 2016. The Scott Islands: A Proposed Marine National Wildlife Area. Accessed at <<https://ec.gc.ca/ap-pa/default.asp?lang=En&n=90605DDB-1>>

⁹ Canada Gazette. 2016. Scott Island Protected Marine Area Regulations.

Primary objectives and corresponding management actions for MPAs should relate to the overall health and diversity of the ecosystem¹⁰. The activities permitted within protected marine areas will vary by specific conservation objectives for the area, as reflected in the legislative mechanisms selected for designation of a protected area. The use of Canada's *Wildlife Act* to designate National Wildlife Areas on its face is a strong tool to protect the marine environment through prohibition of a wide range of human activities for the objectives of conservation and research¹¹, but in practice, as in this case, the full potential of this Act is not being realized.

Accelerating MPA Designation

As we submitted to the House of Commons Standing Committee on Environment and Sustainable Development (ENVI) for its Study on Federal Protected Areas and Conservation Objectives, the pace of MPA designation in Canada is woefully slow. Scott Islands vividly illustrates the problem. The RIAS notes that the marine area around the Scott Islands was first identified as a possible candidate area for protection in 1995, and the government's formal intent to establish a protected area there occurred in 2003. Final protection through law is occurring over twenty years after identifying the need for this protection. Though these regulations are not the place to remedy this defect in MPA regulatory procedures, we thought it worth commenting as the delay has been so long. We submitted a supplementary brief to the ENVI Committee on the topic of legislative deadlines for MPAs, and look forward to the government's consideration of these recommendations.

Minimum Protection Standards should reflect precautionary principle

The Federal Marine Protected Areas Strategy¹² commits to several guiding principles for implementing marine protected areas including the precautionary principle; recognizing that lack of scientific certainty around threats or risk from activities should not be used as a reason not to proceed with protection designations.

To achieve conservation objectives, minimum protection standards for activities permitted within MPAs should be based on this precautionary principle. Potential users must demonstrate that their activities are not harmful to species and ecosystems before engaging in them. Information necessary to make an informed decision must be provided to prevent irreversible ecosystem damage.

¹⁰ Day J., Dudley N., Hockings M., Holmes G., Laffoley D., Stolton S. & S. Wells. 2012. Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas. Gland, Switzerland: IUCN. 36pp

¹¹ WWF-Canada. 2013. An Overview of Federal Instruments for the Protection of the Marine Environment in Canada - Through the creation of Marine Protected Areas and other Spatial Conservation Mechanisms. Retrieved from <http://awsassets.wwf.ca/downloads/mechanisms_for_conservation_of_marine_areas_in_canada.pdf>

¹² DFO. 2005. Canada's Federal Marine Protected Areas Strategy. Retrieved from <<http://www.dfo-mpo.gc.ca/oceans/publications/fedmpa-zpmfed/pdf/mpa-eng.pdf>>

Importance of the Scott Islands marine ecosystem

As the Regulatory Impact Analysis Statement (RIAS) notes, the Scott Islands make up one of the most productive and biologically diverse marine ecosystems on the Canadian Pacific coast, particularly for seabirds, as the area contains productive breeding habitat drawing the largest aggregation of breeding seabirds in the eastern North Pacific south of Alaska, and supporting the most important breeding colonies for seabirds in British Columbia¹³.

In addition to the importance of the area for seabirds, several other factors contribute to the uniqueness and aggregation criteria for this area¹⁴, including the concentration of humpback and North Pacific gray whales and the existence of Canada's largest Stellar sea lion breeding rookery. The marine area is also one of only two places within the Pacific North Coast Integrated Management Area (PNCIMA) where sea otters have established themselves, and it is important feeding, spawning, and rearing habitat for several fish species¹⁵.

Research from the Scott Islands significantly contributes to scientific knowledge about seabirds and interactions with their environment on the Pacific Coast¹⁶.

This unique and significant marine habitat deserves strong regulatory standards to fully protect its marine biodiversity and ecosystem functions.

Existing Designations

The Scott Islands have been recognized through these international designations:

- BirdLife International named them as a globally and nationally significant Important Bird Area (IBA).
- Fisheries and Oceans Canada (DFO) conferred the status of an Ecologically and Biologically Significant Area (EBSA) on the Islands¹⁷.

Neither designation has any legal consequences, though both are useful for greater public awareness of the value of the area.

¹³ IBA Canada. Scott Island Group. Accessed at <<http://www.ibacanada.ca/site.jsp?siteID=BC006>>

¹⁴ DFO. 2004. Identification of Ecologically and Biologically Significant Areas. DFO Can. Sci. Advis. Sec. Ecosystem Status Rep. 2004/006

¹⁵ Jamieson, G.S. and Levesque, C. 2014. Identification of Ecologically and Biologically Significant Areas on the West Coast of Vancouver Island and the Strait of Georgia, and in some nearshore areas on the North Coast: Phase II – Designation of EBSAs. DFO Can. Sci. Advis. Sec. Res. Doc. 2014/101. vii + 36 p

¹⁶ Environment Canada. 2013. Regulatory Strategy for the Designation of the Proposed Scott Islands Marine National Wildlife Area. Retrieved from <https://www.ec.gc.ca/ap-pa/A66BB7F1-CBAE-4A1E-9211-36DFD3CB08CA/Regulatory-Strategy-for-the-Designation-of-the-Proposed-Scott-Islands-Marine-National-Wildlife-Area_EN_21Mar2013.pdf>

¹⁷ Jamieson, G.S. and Levesque, C. 2014. Identification of Ecologically and Biologically Significant Areas on the West Coast of Vancouver Island and the Strait of Georgia.

The RIAS notes that the Province of British Columbia has also conferred several provincial designations on the Islands. These designations control activities within provincial jurisdiction, so do not affect commercial fishing or shipping, activities under federal jurisdiction.

The need for federal regulatory protection is high, and will complement existing designations.

Minimum Protection Standards for permitted activities within Marine Protected Areas and Suggested Amendments to Regulations

The RIAS identifies the threats to seabird populations in this area including oil pollution, marine debris, commercial fisheries and in particular accidental by-catch of seabirds through longline fishing, animal introductions to breeding habitat, human disturbances, and climate change.

WCELA's recommendations for consistent minimum standards of protection within designated MPAs include the use of no-take and buffer zones¹⁸, and the prohibition of all large-scale habitat disturbances by industrial activity, commercial resource extraction (including oil and gas development, drilling, and bottom trawling)¹⁹.

Oil and gas exploration and development

Oil and gas exploration and development within the proposed Scott Islands mNWA boundaries has not been prohibited. Though such activities are currently covered under the federal oil and gas development moratorium for the Pacific offshore area, if the moratorium were lifted in the future the permits and licences currently held within the proposed protected area are still valid.

Accordingly, we recommend that s. 2 "Prohibited Activities" be amended to include this additional prohibition:

- explore for or exploit hydrocarbons, minerals, aggregates or any other inorganic matter in the Protected Marine Area.

Commercial Fisheries

The proposed regulations for the Scott Islands mNWA prohibit only three commercial fisheries for important forage fish species for seabirds (Pacific sand lance, Pacific saury, and North Pacific Krill), though none of these fisheries currently occur within the protected area. Although no current gillnet or longline fisheries operate within the proposed area, these fisheries have been found to have high rates of seabird bycatch²⁰ and should also be prohibited within the proposed mNWA boundaries.

¹⁸ Worm, B., and Lotze, H. K. 2004. Ecosystem impact and management of fisheries in Canadian Marine Protected Areas. World Wildlife Fund Canada.

¹⁹ Day, J.C. and Roff, J.C. 2000. Planning for Representative Marine Protected Areas: A Framework for Canada's Oceans. Report prepared for World Wildlife Fund Canada.

²⁰ Fuller, S.D., Picco C., Ford, J., Tsao C., Morgan, L.E., Hangaard, D., Chuenpagdee, R. 2008. How We Fish Matters: Addressing the Ecological Impacts of Canadian Fishing Gear. Retrieved from <<http://www.livingoceans.org/sites/default/files/HowWeFish.pdf>>

All 15 commercial fisheries and 3 recreational fisheries²¹ that currently operate within the proposed mNWA boundaries will continue. These fisheries have been deemed by the Department of the Environment to align with conservation objectives for the area, though bottom trawl fisheries have been shown to alter benthic habitat and communities²². The proposed regulations for the Scott Islands marine National Wildlife Area permit commercial fishing (and shipping) to occur at current levels within the protected area boundaries with the goal of investigating their impacts once the mNWA is established (including bottom-trawl fisheries' impact on the ecosystem that supports forage for seabirds and 'other marine values'). Though use of seabird by-catch avoidance devices is mandatory within commercial longline fisheries in British Columbia, entanglement incidents have been found to be under-reported - introducing considerable uncertainty to any assessment of risks to seabird species and populations from fisheries²³.

Fishing activities within the proposed mNWA should be prohibited until it is proven that they have no harmful effects on the populations and ecosystems within the area.

Accordingly, we recommend that s. 5 "Exception — fishing and navigation" be amended to delete subsection (a) so that all commercial fisheries are prohibited in the Protected Marine Area.

Vessel Traffic

The regulations will prohibit vessel traffic from being within 300m of Triangle, Sartine, and Beresford Islands, adding federal support to the Provincial Ecological Reserve designation which prohibits public access to the reserves without a permit. The 300m boundaries will not apply to Lanz or Cox Islands (designated Class A Provincial Parks) as they no longer have nesting seabird colonies due to the introduction of raccoon and mink to the islands in the 1930s²⁴.

The proposed regulations also note that surveillance for detecting oiling incidents in the area is low, estimating that fewer than 1% of oiling incidents are currently detected²⁵. The regulations allow commercial shipping through the protected area to continue as before, despite known disturbance impacts to seabirds from ship traffic²⁶, concerns that these activities present threats to

²¹ Environment Canada. 2013. Regulatory Strategy for the Designation of the Proposed Scott Islands Marine National Wildlife Area.

²² Fuller, S.D. et al. 2008. How We Fish Matters.

²³ Boutillier, J. 2016. Characterization and Analysis of Fisheries Related Risks to Significant Species, Habitats and Ecosystem/Community Properties within the Proposed Scott Islands marine National Wildlife Area. DFO Can. Sci. Advis. Sec. Res. Doc. 2016/015. viii + 71 p. Smith, J.L. and K.H. Morgan. 2005. An Assessment of Seabird Bycatch in Longline and Net Fisheries in British Columbia. Technical Report Series No. 401. Canadian Wildlife Service, Pacific and Yukon Region, British Columbia

²⁴ Drever, M. 2002. Important Bird Area Conservation Plan For the Scott Islands.

²⁵ Canada Gazette. 2016. Scott Island Protected Marine Area Regulations.

²⁶ Schwemmer, P., Mendel, B., Sonntag, N., Dierschke, V. and Garthe, S. 2011. Effects of ship traffic on seabirds in offshore waters: implications for marine conservation and spatial planning. *Ecological Applications*, 21: 1851–1860. doi:10.1890/10-0615.1

seabirds in the area²⁷, and studies highlighting that there is currently insufficient data to assess the extent of the threat to seabird species and populations²⁸.

Accordingly, we recommend that s. 5 “Exception — fishing and navigation” be amended to delete subsection (b) so that all vessel traffic is prohibited in the Protected Marine Area.

Alternatively, if all vessel traffic is not prohibited, we recommend that oil tanker traffic be specifically prohibited in the Protected Marine Area, and recommend that s. 2 “Prohibited Activities” be amended to include this additional prohibition:

- Transit in the Protected Marine Area for vessels carrying more than 2,000 tonnes of all types of refined and crude oil.

We recommend complementary regulatory action to these Regulations for vessels other than tankers: establishing vessel navigation lanes, and requiring reduced vessel speeds within the Area to address the risks of ship strikes, reduce oil spills and ship discharge incidents and to minimize underwater noise.

Assigning IUCN Protected Areas to Marine Protected Areas and their Management Plans

Canadian legislative instruments for establishing Marine Protected Areas should require the use of internationally recognized standards to define the objectives for which an MPA is declared. Incorporating the IUCN categories and objectives would set restrictions on activities and would encourage greater consistency in management of MPAs declared under different legislation²⁹.

The 54 designated National Wildlife Areas in Canada have already incorporated IUCN categories into their listings³⁰, however not all sites have associated management plans available to describe how the site’s protection meets the objectives of the category.

Accordingly, we recommend that the Regulations be amended to require that the Scott Islands Protected Marine Area be assigned an IUCN category.

Delay in establishing management plans is also endemic for MPAs in Canada. For example, the Bowie Seamount MPA established under the Canada *Oceans Act* still does not have a management plan in place, almost nine years after the MPA was established, and seven years after the Department’s own deadline. The Commissioner on Environment and Sustainable Development

²⁷ Drever, M. 2002. Important Bird Area Conservation Plan For the Scott Islands. Prepared for the Canadian Nature Federation

²⁸ Boutillier, J. 2016. Characterization and Analysis of Fisheries Related Risks to Significant Species, Habitats and Ecosystem/Community Properties within the Proposed Scott Islands marine National Wildlife Area

²⁹ Day, J. et al. 2012. Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas.

³⁰ Department of Environment and Climate Change Canada. National Wildlife Areas. Accessed at <<https://ec.gc.ca/ap-pa/default.asp?lang=En&n=2BD71B33-1>>

highlighted this issue in his 2012 Report: “Although the Department committed to having a plan developed by April 2010, two years after designation, the management plan for the Bowie Seamount MPA is still in draft form.”³¹

Accordingly, we recommend that the Regulations be amended to include a timeline for the preparation of a management plan, and that the management plan must be consistent with the IUCN principles pertaining to the MPA’s IUCN category.

Prohibiting Activities Outside the Boundary that May Cause Harm Within

National and Provincial goals of implementing a network of Marine Protected Areas within Canada’s marine bioregions commit to moving away from an ad-hoc approach to MPA designation and establishing a more systematic approach for marine protection planning^{32,33}. To achieve this objective requires assessment of ecological and oceanographic processes which connect MPAs to other areas important for achieving conservation goals, and influences from activities occurring beyond the boundaries of the protected area. For example, the establishment of the Gully Marine Protected Area offshore of Nova Scotia in 2004 included a ‘vicinity clause’ prohibiting activities including depositing, discharging or dumping outside the MPA boundary that cause damage or disturbance within³⁴. By addressing potentially harmful human impacts occurring beyond the boundary of the protected area, the Gully MPA regulations provides integration of the MPA within broader ocean ecosystem management.

Accordingly, we recommend that the Scott Islands Protected Marine Area Regulations be amended to include the vicinity clause, by adding the text in bold below to s. 2(1) (a)

2 (1) It is prohibited to

- (a) carry out any activity that is likely to disturb, damage, destroy or remove wildlife or its habitat in the Protected Marine Area **or in the vicinity of that Area;**

Increase Size of Protected Marine Area

The habitats and species encompassed within a MPA, and the standard of protection afforded to these ecosystem components will influence the success of overall conservation goals for the network. Following best scientific advice on the adequate size, shape, and ecological connectivity of an MPA will help to ensure the viability of protected populations and ecosystems³⁵. The proposed marine area for protection within the Scott Islands mNWA was decreased by 45% during the assessment process (from an original ecosystem overview of over 25000km² to the current

³¹ Paragraph 3.49, CHAPTER 3. 2012 Fall Report of the Commissioner of the Environment and Sustainable Development.

³² DFO. 2005. Canada’s Federal Marine Protected Areas Strategy.

³³ Canada – British Columbia Marine Protected Area Network Strategy, 2014.

³⁴ VanderZwaag, D.L., and Macnab, P. 2011. Marine Protected Areas: Legal Framework for the Gully off the coast of Nova Scotia (Canada). IUCN-EPLP No. 81

³⁵ Burt, J.M., Akins, P., Lathem, E. Beck, M., Salomon, A.K., Ban, N.C. 2014. Marine protected area network design features that support resilient human-ocean systems - Applications for British Columbia, Canada. Simon Fraser University. British Columbia, Canada. 159 pp.

proposed boundary encompassing 11546km²)^{36,37}, but at-sea foraging habitat data suggests that important areas for Cassin's Auklet and Rhinoceros Auklet have not been included within the proposed boundaries³⁸.

Accordingly, we recommend that the size of the Scott Islands Protected Marine Area established by order be increased to the original 25000km² area. This will include all the important foraging areas for seabirds.

Conclusion

The protection of the ecologically important marine area of the Scott Islands will significantly contribute to achieving Canada's international and national targets to protect 10% of the coastal and marine environments and to the creation of a network of marine protected areas within the Northern Shelf Bioregion. The standard of protection currently proposed should be amended to more effectively achieve the marine conservation objectives for this area. The establishment of the first marine National Wildlife Area creates the opportunity to set a high bar for protection and establish minimum levels of protection that should be applied to all MPAs in Canadian oceans.

Yours truly,

The image shows two handwritten signatures in black ink. The signature on the left is 'Linda Nowlan' and the signature on the right is 'Maryann Watson'. Both are written in a cursive, flowing style.

Linda Nowlan, Staff Counsel

Maryann Watson, Marine Campaigner

³⁶ Environment Canada. 2013. Regulatory Strategy for the Designation of the Proposed Scott Islands Marine National Wildlife Area.

³⁷ Fort, K., Amey, K., Dunn, M. 2006. *Scott Islands Marine Wildlife Area Study Area – An Ecosystems Overview Report*. Technical Report Series No. 427. Canadian Wildlife Service, Pacific and Yukon Region, British Columbia.

³⁸ CPAWS. 2016. Backgrounder: The Proposed Scott Islands marine National Wildlife Area. Retrieved from <http://cpawsbc.org/upload/Scott_Islands_brief_2016_12_03.pdf>