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Protecting Canada's Marine Heritage

**Proposed policy and
regulations for Canada's
national marine
conservation areas**

DISCUSSION PAPER

May 2019



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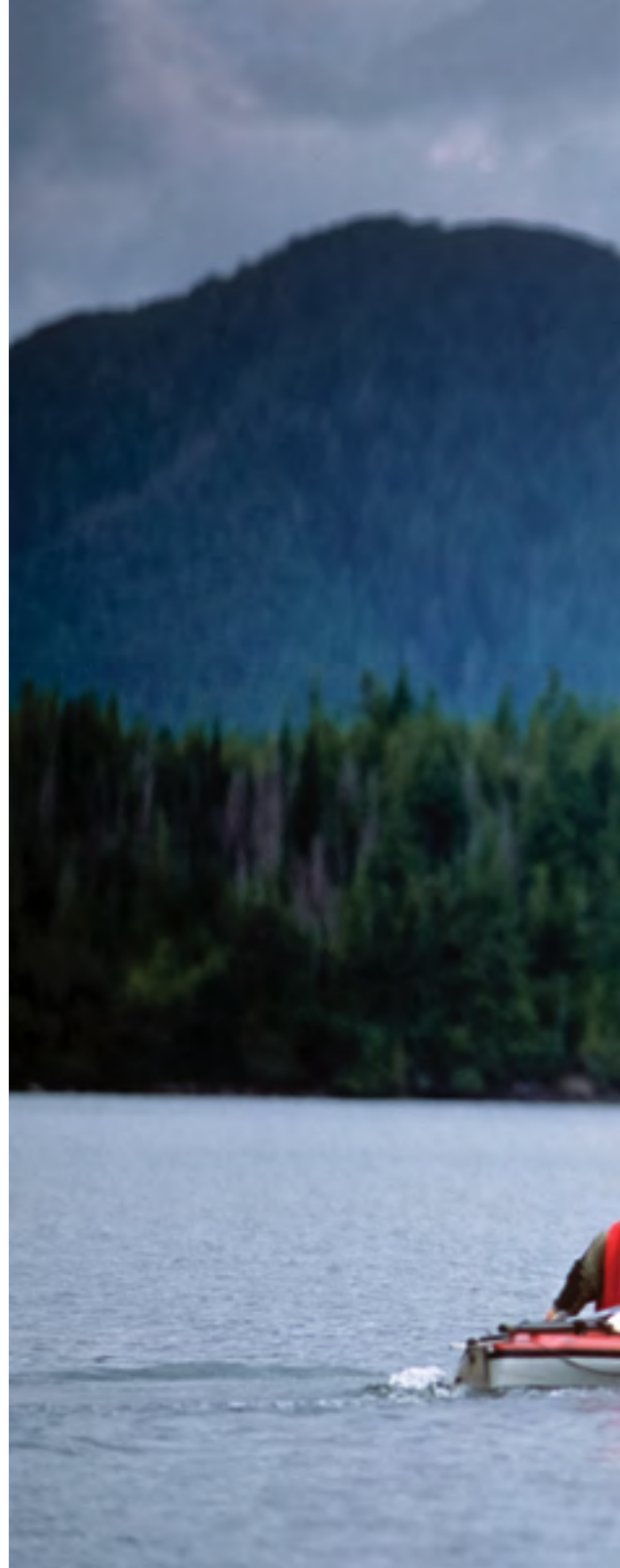
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Toward a revised policy for national marine conservation areas

Parks Canada's national marine conservation area (NMCA) policy guides how the Agency plans and manages NMCAs, and articulates Parks Canada's leadership role in working with partners and stakeholders to support these special places.

Updates to the 1994 policy are needed to align it with the *Canada National Marine Conservation Areas Act* (2002). The updates will also reflect the experience Parks Canada has gained from more than 20 years of establishing and managing NMCAs. This revision will help ensure that representative examples of Canada's marine heritage are protected and conserved today, and for future generations.

Parks Canada would like to hear from individuals and stakeholder groups with an interest in national marine conservation areas. A backgrounder and a discussion paper have been prepared to facilitate this process:

- This discussion paper highlights the proposed changes to the NMCA policy and potential areas for new regulations.
- A backgrounder summarizes Parks Canada's policy objectives for NMCAs and our strategy for achieving them, providing additional context for the discussion paper.

The public is invited to visit Parks Canada's online engagement platform at **www.letstalknmcas.ca**. We invite you to review the documents and provide your thoughts.

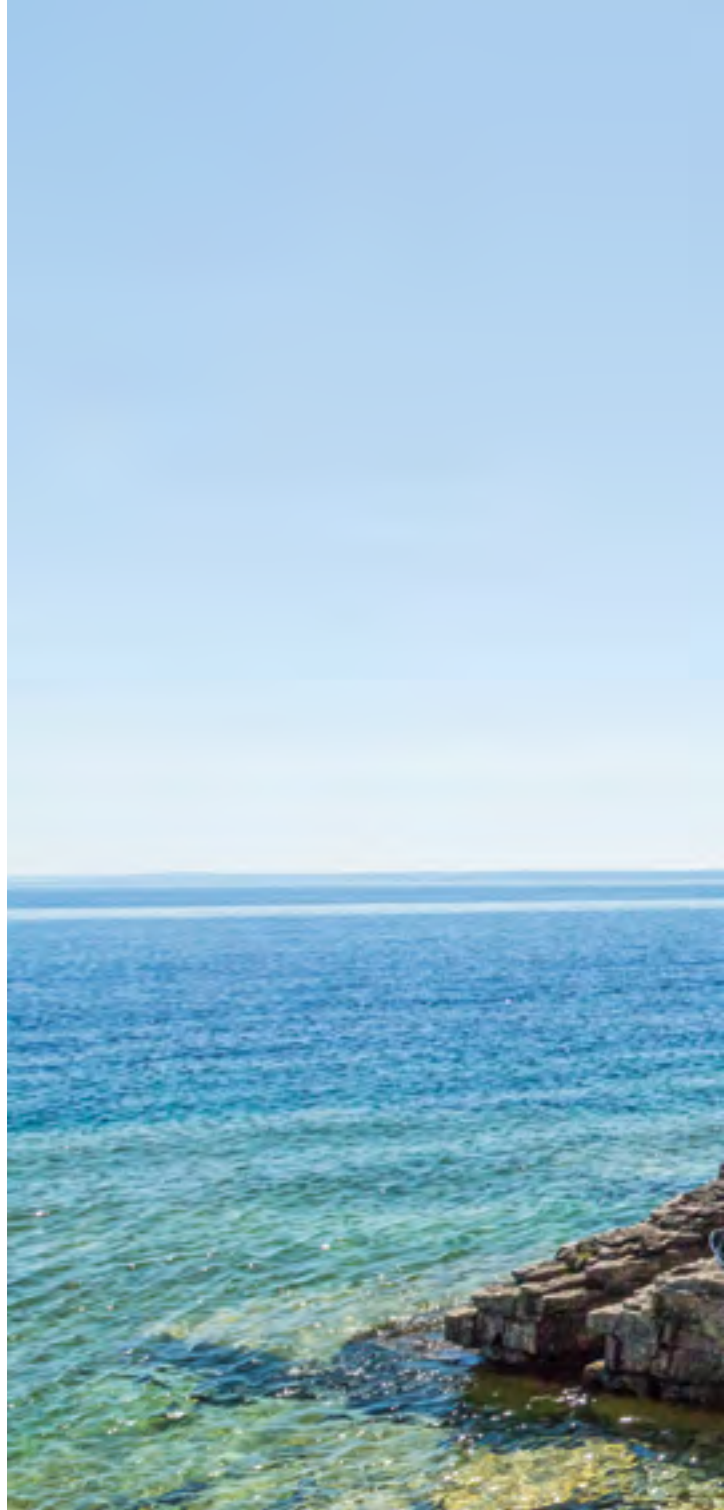
Why this work is important

Canada has the longest coastline in the world with more than 243,000 km along the Atlantic, Arctic and Pacific oceans, plus another 9,500 km along the Great Lakes. The vast, varied and productive marine ecosystems off these coasts have played a major role in shaping Canada's history and economy. The Government of Canada is committed to protecting and conserving the marine environment over the long term.

Parks Canada has a responsibility to Canada and the world to protect examples of our nation's marine heritage. We have a mandate to establish a system of national marine¹ conservation areas (NMCAs) that represent the full range of marine ecosystems found in Canada's three oceans and the Great Lakes. The *Canada National Marine Conservation Areas Act* gives Parks Canada the authority to establish and manage these areas.

NMCAs are marine areas that include a lakebed or seabed and water column above it, and may also take in wetlands, estuaries, islands and other coastal lands. Parks Canada and its partners manage NMCAs with an overarching goal: to protect and conserve representative marine ecosystems and key features within those ecosystems, while ensuring NMCAs are used in an ecologically sustainable manner. By law, NMCAs are protected from industrial activities, including undersea mining and oil and gas exploration and development, and have strict restrictions on ocean disposal.

1 Throughout this document, "marine" refers to areas in the marine environment (i.e. oceans, estuaries) and the Great Lakes (i.e. freshwater).





The changes we'd like to see

To ensure NMCAs are managed effectively, and to help guide managers in their decision making, Parks Canada is updating its 1994 policy and developing regulations as per section 16 of the *Canada National Marine Conservation Areas Act*. Parks Canada has learned valuable lessons over 20 years of managing Canada's marine conservation areas. To reflect this evolution, we are proposing policy and regulatory changes to our NMCA program in the following areas:

- A.** Overall policy objectives for NMCAs
- B.** A revised NMCA zoning framework
- C.** Enhanced protection of marine biodiversity and ecosystems within NMCAs
- D.** Ecologically sustainable land use in NMCAs
- E.** Protection of cultural resources in NMCAs
- F.** Promotion and management of marine tourism and recreation in NMCAs
- G.** Management of research and collection activities in NMCAs

A. Overall policy objectives for NMCAs

As the *Canada National Marine Conservation Areas Act*, s. 4(1) states, NMCAs are established and managed to protect and conserve representative marine areas for the benefit, education and enjoyment of the people of Canada and the world. The purpose of NMCAs is to achieve ecological sustainability in these areas, create enjoyable experiences for visitors, promote awareness and understanding among Canadians, and provide benefits for Indigenous peoples and coastal communities.



What we're proposing

Parks Canada has outlined the following policy objectives (see backgrounder) to help achieve the purpose of NMCAs. These objectives are inter-connected and mutually reinforcing, and will be considered collectively as Parks Canada manages NMCAs collaboratively with partners.

1. Collaborate and consult on the planning and management of NMCAs.
2. Protect and conserve marine biodiversity and ecosystems within NMCAs.
3. Ensure that marine uses in NMCAs are ecologically sustainable.
4. Conserve cultural heritage in NMCAs.
5. Recognize Indigenous peoples' responsibilities as stewards of NMCAs.
6. Support the social, cultural and economic well-being of Indigenous peoples and coastal communities adjacent to NMCAs.
7. Foster visitor experiences that build strong connections to and enjoyment of NMCAs.
8. Promote awareness, understanding and appreciation of the natural and cultural heritage of NMCAs.
9. Advance knowledge and understanding of marine environments in NMCAs.



Seeking your views

What is your opinion of Parks Canada's overall policy objectives for NMCAs?

B. A revised NMCA zoning framework

Zoning is an essential part of NMCA management plans. NMCAs are multiple-use areas, and under law, all the lands and waters of an NMCA must be zoned. Each zone provides a different level of protection by allowing or prohibiting certain activities and uses, and by setting out permitting requirements.

To achieve key ecological and cultural objectives the zoning framework separates potentially conflicting human activities and minimizes socio-economic impacts. Zones are mapped during the planning process and are part of the NMCA management plan. Zoning will provide the basis for management actions and regulations that are easily understood, and easy



Seeking your views

From your perspective, does the proposed zoning framework allow for appropriate management of activities and uses in an NMCA?



to comply with and enforce. Any changes to zones are made only after stakeholders, Indigenous peoples and the public have been consulted.

What we're proposing: A revised zoning framework supported by regulations

Parks Canada is proposing a zoning framework comprising four zones, each with a specific purpose (see Table 1), and specific activity and use restrictions (see Table 2).

Not every NMCA will be required to have all zones. However, each NMCA must have both a “fully protected zone” where extractive use of marine resources is prohibited (zone 1 or 2) and an “ecologically sustainable use zone” where extractive use of renewable marine resources may occur (zone 3 or 4).

Scientific evidence shows us that full protection is more effective than partial protection for maintaining biodiversity. Therefore, Parks Canada is proposing that most of the area of an NMCA be zoned 1, 2 or 3 to offer a greater degree of protection to the NMCA.

Working in collaboration with other federal departments, we are proposing to develop zoning regulations under the *Canada National Marine Conservation Areas Act*. These regulations will provide geographic boundaries for all zones; restrictions on access in zone 1; prohibitions on extractive use in zones 1 and 2; restrictions on activities that negatively impact the seabed or lakebed in zones 1-3; and prohibitions on bottom trawling in zones 1-4. Developing a well-coordinated regulatory approach to zoning will make the restrictions on activities and uses legally enforceable and help safeguard these protected areas.

Table 1: Zoning purposes

Zone 1 (Restricted Access) will fully protect special features (including cultural resources) and/or sensitive ecosystem elements that are susceptible to or intolerant of disturbance through a prohibition on extractive use and restrictions on access.	Zone 2 (General Protection) will fully protect special features and/or sensitive ecosystem elements and/or representative characteristics of the marine region. Extractive use is prohibited.	Zone 3 (Multiple Use with Lakebed or Seabed Protection) will provide protection to lakebed or seabed ecosystems and/or cultural resources located on the lakebed or seabed while allowing for a range of uses of renewable marine resources that are compatible with the protection objectives of the zone.	Zone 4 (Multiple Use) will sustain the greatest range of uses that do not compromise the ecosystem structure and function.
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Table 2: Proposed marine activities and uses by zone category in NMCA's

	Restricted Access	General Protection	Multiple Use with Lakebed/ Seabed Protection	Multiple Use	
Activities and Uses	Zone 1	Zone 2	Zone 3	Zone 4	Limits/Permits/Exceptions
Traditional use	✓	✓	✓	✓	Access and use by Indigenous peoples of an NMCA as per their rights will not be subject to zone restrictions except for conservation, public health or public safety reasons determined in consultation with Indigenous rights holders.
Research and monitoring	▲	✓	✓	✓	A permit will be required in all zones, and only limited access will be allowed in zone 1.
Recreational activities	✗	✓	✓	✓	No permits required. Limitations may apply in cases of visitor safety and resource protection.
Commercial tourism	✗	✓	✓	✓	A permit will be required for commercial recreational activities in zones 2–4.
Commercial shipping	✗	✓	✓	✓	Conducted in accordance with Transport Canada's legislative and regulatory framework. Anchoring may be restricted to ensure bottom protection.
Permanent moorings	✗	▲	▲	✓	Permit will be required, and conditionally allowed depending on nature of proposal and its location.

	Restricted Access	General Protection	Multiple Use with Lakebed/ Seabed Protection	Multiple Use	
Activities and Uses	Zone 1	Zone 2	Zone 3	Zone 4	Limits/Permits/Exceptions
Coastal and in-water infrastructure	✘	▲	▲	✓	Permit will be required, and conditionally allowed depending on nature of proposal and its location.
Recreational fishing	✘	✘	✓	✓	Conducted in accordance with <i>Fisheries Act</i> regulations, including stated limits and licensing requirements.
Commercial fisheries/harvest: water column	✘	✘	✓	✓	Conducted in accordance with <i>Fisheries Act</i> regulations, including stated limits and licensing requirements.
Commercial fisheries/harvest: bottom contact	✘	✘	▲	▲	Conducted in accordance with <i>Fisheries Act</i> regulations, including stated limits and licensing requirements.
Limited collecting for personal or educational use	✘	✘	✓	✓	Collection of renewable resources only (e.g. berries, sea shells). The collection of archaeological and historical artifacts, including fossils or species at risk is prohibited.
Recreational hunting	✘	✘	✓	✓	Conducted in accordance with applicable regulations, including stated limits and licensing requirements.
Renewable Energy	✘	✘	✘	▲	Permit will be required, and conditionally allowed depending on nature of proposal and its location.
Aquaculture	✘	✘	✘	▲	Permit will be required, and conditionally allowed depending on nature of proposal and its location.
Commercial fisheries/harvest: Bottom trawling	✘	✘	✘	✘	Prohibition following Government of Canada decision on recommendations from the national advisory panel on MPA standards.
Oil and Gas Exploration and Exploitation	✘	✘	✘	✘	Prohibition under the <i>Canada National Marine Conservation Areas Act</i> .
Mining	✘	✘	✘	✘	Prohibition under the <i>Canada National Marine Conservation Areas Act</i> .

Key:

✓	At the national scale, activity or use is deemed to be consistent with the purpose of the zone, and must be conducted in accordance with the purpose and objectives of an NMCA
▲	Conditionally allowed if activity aligns with site-specific objectives, and will depend on nature of proposal and its location
✘	Activity is deemed to be inconsistent with the purpose of the zone or the NMCA and will not be allowed.

Notes:

- Note that some NMCAs may be more restrictive if that is decided upon during the collaborative management planning process.
- Activities related to search and rescue, Canadian sovereignty or security will not be restricted by NMCA zoning.
- The rights of Indigenous peoples are respected in NMCAs. Regulations or zoning restrictions do not apply to rights-based access and use of NMCAs by Indigenous peoples, except in consultation with Indigenous rights holders.

C. Enhanced protection of marine biodiversity and ecosystems within NMCAs

NMCAs are places that protect and conserve healthy and resilient marine ecosystems. The *Canada National Marine Conservation Areas Act* provides fundamental protection to these areas through a prohibition on oil, gas, mineral and aggregate exploration and exploitation, and by placing strict limits on ocean disposal. The *Canadian Environmental Protection Act, 1999*; the Fisheries Act; and the *Species at Risk Act* also provide protection to these areas. A legally enforceable zoning framework will provide additional protection.

What we're proposing

Some issues are not adequately covered by existing legislation in ways that ensure the protection of ecosystems and specific elements within ecosystems in NMCAs. Parks Canada is proposing regulatory changes that would accomplish the following:

- Provide for the management and control of activities that could impact species at risk and their habitats within NMCAs.
 - In collaboration with other jurisdictions, protect species and habitats by taking measures to prevent the introduction of invasive alien species and manage the relocation of species.
 - In collaboration with Transport Canada, manage aircraft and drone use to prevent danger or disturbance to wildlife and wildlife habitat and promote public safety and public enjoyment within NMCAs.
- Protect ecosystems, cultural resources and visitor safety through temporary closures or restrictions. This would give Parks Canada managers the ability to close or restrict specific areas or activities within an NMCA on a case-by-case basis for reasons that relate to:
 - imminent and significant risk to visitor safety
 - responding to critical or key life cycle functions (e.g. narwhal calving that may change spatially through time)
 - protecting sensitive artifacts (e.g. discovery of an important cultural resource such as a shipwreck or an archaeological site before zoning can be updated)



Seeking your views

From your perspective, what are the potential benefits and impacts of these proposed protection measures within NMCAs?

D. Ecologically sustainable land use in NMCAs

Public lands in an NMCA can be used or occupied only in accordance with permits and regulations under the *Canada National Marine Conservation Areas Act*. To implement the zoning framework and manage activities and uses in an ecologically sustainable manner, new types of land use permits and licenses are required. This applies to infrastructure such as docks, boathouses, slips and launches, marinas, anchored infrastructure, marine renewable energy operations, underwater cables and water intake pipes, and any infrastructure on islands or coastal lands.



Seeking your views

From your perspective, what are some important considerations related to developing the land use permitting system?

What we're proposing

Parks Canada is proposing to develop regulations and a permitting system to authorize land use in NMCAs, including submerged lands. In cases where a project or activity is mainly managed by others, but has a land use component (e.g. aquaculture operation, renewable energy operation), Parks Canada would work with the other authorities to coordinate permits and environmental assessments.



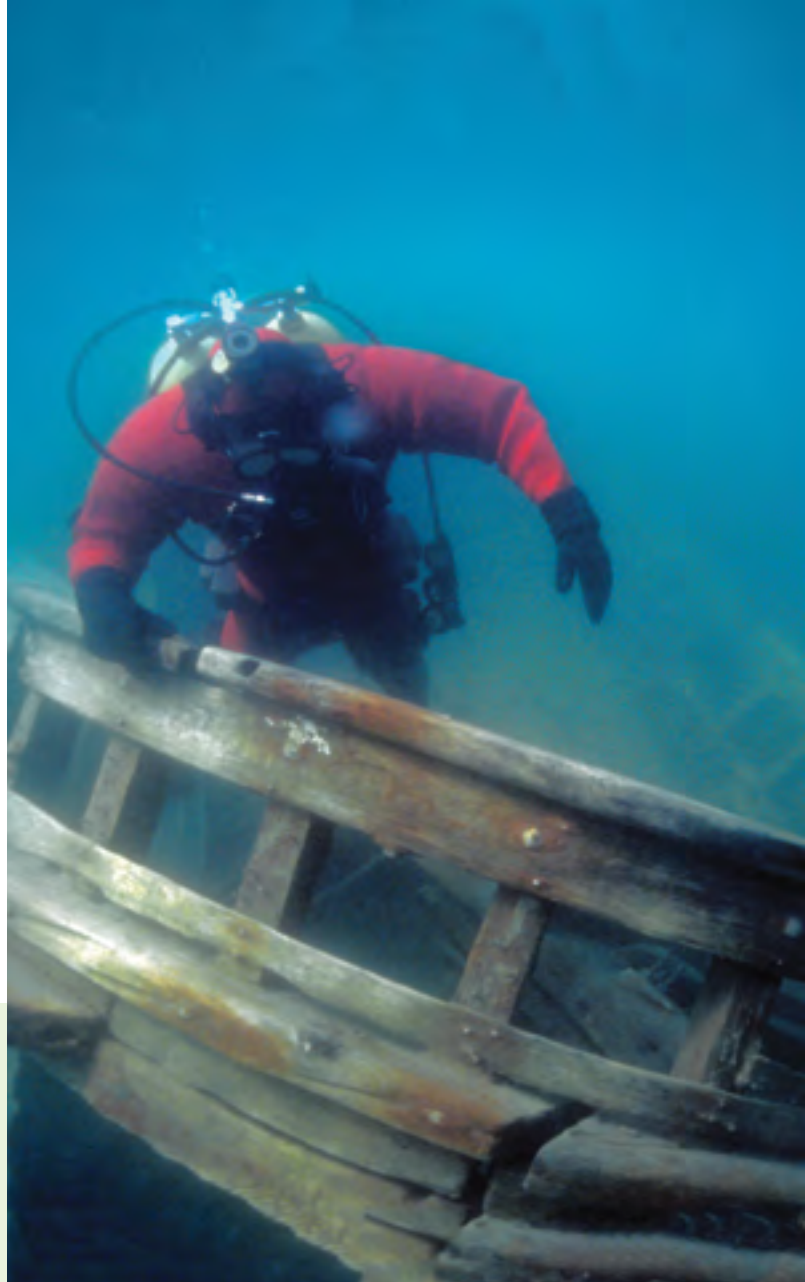
E. Protection of cultural resources in NMCAs

In addition to protecting and conserving the ecosystems of marine areas, NMCAs conserve cultural resources and heritage values. These reflect the past and ongoing use of cultural landscapes and seascapes by many generations of Indigenous peoples and coastal communities. Threats to cultural resources in NMCAs may arise from natural processes, such as erosion, decomposition and sedimentation, and from human activities such as construction, harvesting, fishing, trawling, ecotourism, diving, souvenir collecting, filming, remote sensing survey, salvage and hydrographic mapping.

What we're proposing

Currently, there is no distinct legal framework to ensure the protection and management of cultural resources in NMCAs. Parks Canada is proposing regulatory changes that would accomplish the following:

- prevent the damage, destruction or disturbance of cultural resources from human activities by prohibiting their unauthorized disturbance, defacement, removal or destruction
- restrict certain kinds of activities around cultural resources
- provide a mechanism for controlling access to cultural resources in an NMCA when required for reasons of conservation or visitor safety



Seeking your views

From your perspective, what are the potential benefits and impacts of protecting cultural resources through the types of regulations described above?

F. Promotion and management of marine tourism and recreation in NMCAs

NMCAs are places that people can enjoy—where they can pursue livelihoods that are compatible with and support the values and cultural resources of the area without compromising the structure and function of marine ecosystems. When Parks Canada provides people with engaging, educational and entertaining visitor experiences, we help ensure that protected heritage places remain relevant to Canadians, and continue to provide benefits, education and enjoyment for future generations.

What we're proposing

Parks Canada needs the ability to manage businesses that provide high-quality visitor experiences—for activities such as whale watching, kayaking and cruise ship tours, and for special events, including private functions—in ways that are ecologically sustainable and consistent with the purpose of the NMCA and its management plan, and that protect visitor safety. Therefore, we are proposing to develop new business regulations.

We are proposing that businesses and special events within NMCAs require a permit or other authorization. Parks Canada would use its existing assessment policies for recreational activities and special events to decide whether or not it should be allowed, and to determine whether any conditions or environmental mitigations are required.



Seeking your views

From your perspective, what are some key considerations in developing regulations to manage marine tourism and recreation in NMCAs?



G. Management of research and collection activities in NMCA's

Parks Canada encourages research for scientific purposes in NMCA's. Parks Canada conducts some of this research itself and also welcomes other parties—such as other government departments, universities, independent researchers and Indigenous peoples—to do so. Research will inevitably vary widely among NMCA's, but may include natural, archaeological and social science research, and may sometimes include the collection of specimens such as plants or water. NMCA's provide sites for long-term ecological and environmental research, and are benchmarks for science and human understanding of the oceans and Great Lakes.

All scientific research and collection activities need to be conducted in ways that are consistent with the NMCA's management plan and zoning, and with all relevant legislation and permitting processes (e.g. *Species at Risk Act*, *Canadian Environmental Assessment Act* and northern regulatory regimes) and with Parks Canada policy—particularly where research includes sensitive cultural resources such as archeological sites or objects.

For NMCA's where we have cooperative management agreements with Indigenous partners, we will reach agreements on research priorities and activities in collaboration with them. Parks Canada has an existing research and collection permitting system that is used to manage and track research in national parks.

What we're proposing

Parks Canada is proposing to develop a regulation for scientific research within NMCA's, and use its existing research and collection permit system to manage research and collection activities in NMCA's in the same manner as for national parks. When research activities overlap with the jurisdiction of other managers, we will work with them to coordinate permits.



Seeking your views

From your perspective, what are some important considerations related to developing permits for scientific research?



Next steps

We are interested in your views on the policy and regulatory direction for NMCAs outlined in this document, and we welcome any questions you may have. Your comments and perspectives will help us develop an updated policy framework for the NMCA program and regulations under the *Canada National Marine Conservation Areas Act*.

Following this consultation, and building on the feedback we receive, Parks Canada will update the NMCA policy and begin to draft regulations.

Please visit **www.letstalknmcas.ca** to provide your input and feedback.

