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A PETITION TO THE AUDITOR GENERAL OF CANADA
pursuant to s. 22 of the *Auditor General Act*

Respecting the Lack of Progress on Completing the Management Plan for Bowie Seamount (Sgaan Kinghlas) Marine Protected Area and Lack of Progress on Establishing A Representative System of Marine Protected Areas

April 17, 2012

To:

Office of the Auditor General of Canada
Commissioner of the Environment and Sustainable Development
Attention: Petitions
240 Sparks Street
Ottawa, Ontario K1A 0G6

And to:

The Honourable Keith Ashfield
Minister of Fisheries and Oceans
Parliament Buildings,
Wellington Street Ottawa,
Ontario Canada K1A 0A6

Petitioner: WWF-Canada

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Summary

The Bowie Seamount (Sgaan Kinghlas) Marine Protected Area (MPA) was designated on April 17, 2008.

The federal government committed to complete a management plan within two years of the designation. To date no management plan has been developed or implemented. Without the clear operational guidance of a management plan, the preservation of this unique ecosystem may be undermined.

The Oceans Act requires the Minister to implement a national system of MPAs. The Act came into force in 1997. Fifteen years later, there is no national system of MPAs, though some progress has been made.

Background information:

1. The *Oceans Act* came into force on January 31, 1997.
2. That Act directs the Minister of Fisheries and Oceans to “lead and coordinate the development and implementation of a national system of marine protected areas on behalf of the Government of Canada.” S. 35 (2).
3. Canada’s Federal Marine Protected Areas Strategy was released in 2005; eight years after the Oceans Act came into force.
4. On September 1, 2011, Canada's federal, provincial and territorial members of the Canadian Council of Fisheries and Aquaculture Ministers reviewed and approved in principle the National Framework for Canada's Network of Marine Protected Areas, fourteen years after the Oceans Act came into force.
5. In 1998, the Minister of Fisheries and Oceans selected Bowie Seamount as an Area of Interest under the Marine Protected Areas (MPA) program. Fisheries and Oceans Canada (DFO) describes the Bowie Seamount as follows: “The Bowie Seamount MPA (Sgaan Kinghlas) encompasses a complex of three offshore submarine volcanoes. It is located 180 km off shore of Haida Gwaii and rises from a depth of 3,000 metres to within 24 meters of the surface making it the shallowest seamount in Canada. It is a rare habitat in the northeast Pacific Ocean and one of Earth’s most biologically rich submarine volcanoes.”¹

¹ <http://www.pac.dfo-mpo.gc.ca/oceans/protection/mpa-zpm/bowie/index-eng.htm>

6. The Oceans Act, Section 35 (1) defines MPAs as areas of the sea that form part of the internal waters (...), territorial sea or the exclusive economic zone (EEZ) that require special protection due to the following reasons: (a) the conservation and protection of commercial and non-commercial fishery resources, including marine mammals, and their habitats;
 - (b) the conservation and protection of endangered or threatened marine species, and their habitats;
 - (c) the conservation and protection of unique habitats;
 - (d) the conservation and protection of marine areas of high biodiversity or biological productivity; and
 - (e) the conservation and protection of any other marine resource or habitat as is necessary to fulfill the mandate of the Minister.
7. According to the Regulatory Impact Analysis Statement (RIAS) for the Bowie Seamount Marine Protected Areas Regulations, the site meets the criteria set out above in paragraphs 35 (a), (b), (c), (d) and (e) above.²
8. Bowie Seamount (Sgaan Kinghlas) was designated Canada's seventh Marine Protected Area on April 17, 2008, ten years after it was announced as an Area of Interest.
9. The Oceans Act, s. 35 (3) gives the Governor in Council, on the recommendation of the Minister, the authority to make regulations to designate MPAs and to prescribe measures such as:
 - (i) the zoning of marine protected areas,
 - (ii) the prohibition of classes of activities within marine protected areas, and
 - (iii) any other matter consistent with the purpose of the designation.
10. The Oceans Act is silent on the duty to create management plans for MPAs, and does not mandate timelines for creating these plans. However, management plans are a critical part of establishing an MPA. DFO's National Framework for Establishing and Managing MPAs, a policy statement issued by DFO in 1997, sets out the steps for creating an MPA. Step 4 in this process *Development of a Management Plan for a Candidate MPA Site* states that: "The management plan for an MPA will state the reasons for the MPA, its goals and objectives, how the goals and objectives are to be reached, and how the success of the MPA will be measured. A management plan will be prepared for each MPA, based on proposals and assessment reports, and on comments of stakeholders, the public, and government agencies. The planning process

² March 22, 2008, Part I, Part 1, Volume 142, Number 12, Canada Gazette, at pg 1.

will address the issues and concerns of interested parties within the context of the stated purpose and objectives for the MPA.”³

11. The 2008 RIAS for Bowie Seamount Marine Protected Area Regulations states that a Management Plan will elaborate on the regulations to achieve the conservation and management objectives for the MPA.
12. The 2008 RIAS for Bowie Seamount Marine Protected Area Regulations further states that: “This Management Plan will be completed within 24 months following designation of the MPA.”⁴
13. This MPA is being co-managed with the Council of the Haida Nation. A Management Board for the Bowie Seamount Protected Area was established through a Memorandum of Understanding (MOU) signed in April 2007 between the Government of Canada and the Council of the Haida Nation (CHN).
14. The MOU states that the Management Board will have the responsibility to develop and recommend to the Minister and the CHN, a Protected Area Management Plan for the planning and management of the Protected Area; S. 4.1 (b).
15. Despite these commitments in the National Framework for Establishing and Managing MPAs, the RIAS for the Bowie Seamount Marine Protected Area Regulations, and the MOU between the Government of Canada and the Council of the Haida Nation, no management plan for the Bowie Seamount MPA is yet in place.
16. WWF is a member of the Bowie Seamount MPA Advisory Committee, established to act as a connection between the Management Board, the Government of Canada, the Council of the Haida Nation, the larger marine community and the general public.
17. The Bowie Seamount MPA Advisory Committee met June 28-29, 2011; March 21, 2011 (by teleconference); and March 12, 2010. Several meetings of the Management Board also occurred in this time period.
18. WWF has provided input on its’ expectations for an effective management plan, and in particular has consistently requested that DFO set firm timelines and follow through on actions to develop the management plan.
19. A number of activities are now permitted in the MPA: a limited sablefish fishery, recreational and aboriginal fishing, scientific research, and marine transportation. All these activities should

³ *National Framework for Establishing and Managing Marine Protected Areas* (DFO, 1997).

⁴ March 22, 2008, Part I, Part 1, Volume 142, Number 12, Canada Gazette., at pg 5.

be assessed and monitored with regard to the conservation objectives of the MPA and adjusted as necessary with guidance as part of the management plan.

20. At the most recent meeting of the SGaan Kinghlas - Bowie Seamount Protected Area Advisory Committee on June 28- 29, 2011, the Desired Outcomes of the Meeting were listed as follows:

- Update on SGaan-Kinghlas – Bowie Seamount MPA (the Protected Area)
- Approve the SGaan-Kinghlas – Bowie Seamount Advisory Committee terms of reference (ToR)
- Develop a common understanding of the stressors-based approach to developing conservation objectives
- Provide key advice for the development of the management plan for the Protected Area by identifying and discussing Significant Ecosystem Components, activities, and potential stressors.⁵

21. Over the past four years, four different DFO personnel in the Prince Rupert DFO office have been responsible for the Bowie file. Such turnover is bound to have an effect on the pace of developing the plan.

22. As of April 17, 2012, four years after the Bowie Seamount MPA was formally designated and two years after the internal deadline set by DFO:

- No draft management plan has been released for discussion by the Committee, though the expectations for the plan were solicited verbally in June 2011, and DFO indicated that it would ask the Committee for comment on sections of the management plan by the end of the year (2011). This has not happened. WWF reports that there was a lot of goodwill among stakeholders built at this meeting, and momentum to review, provide input and complete the plan, which has been left unharnessed.
- The Terms of Reference for the Advisory Body have not been formalized though WWF and other stakeholders have provided input and signed off on them several times.
- The latest proposed meeting of the SGaan Kinghlas - Bowie Seamount Protected Area Advisory Committee that was anticipated to take place in May 2012, appears to have been postponed, and no further meetings have been scheduled.

23. The Commissioner of the Environment and Sustainable Development noted delays in implementing MPAs and completing MPA management plans in 2005. Chapter 1 of the 2005 Annual Report of the Commissioner of the Environment and Sustainable Development describes the audit of the Oceans Management Strategy and the implementation of the *Oceans Act*. The CESD stated that “[i]mplementing the *Oceans Act* and subsequent oceans strategy has

⁵ <http://www.pac.dfo-mpo.gc.ca/consultation/oceans/bowie/docs/min-pv/2011-06-28-29-eng.htm>

not been a government priority. After eight years, the promise of the *Oceans Act* is unfulfilled. Fisheries and Oceans Canada has fallen far short of meeting its commitments and targets: it has finalized no integrated management plans and has designated only two marine protected areas.⁶

24. In 2012, seven years after that audit, the problems with DFO's MPA strategy are still apparent.
25. WWF submits that it is impossible to adequately manage and secure long term protection for the Bowie Seamount MPA without a management plan and resources to implement it and that one of the world's most biologically rich submarine volcanoes may be at risk due to the lack of additional management measures to protect this unique ecosystem.

Questions

WE THEREFORE PETITION THE COMMISSIONER FOR THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT TO REQUEST:

The Hon. Keith Ashfield, Minister of Fisheries and Oceans to answer these questions:

With regard to SGaan Kinghlas - Bowie Seamount MPA

1. When will the Minister of Fisheries and Oceans release a management plan to fulfill the federal government's public commitment made in the Regulatory Impact Analysis Statement (RIAS) to complete a management plan for SGaan Kinghlas - Bowie Seamount MPA within 24 months following designation of the MPA?
2. Please explain what steps will be taken to expedite the completion of the SGaan Kinghlas - Bowie Seamount MPA Management Plan.
3. Can the Minister confirm whether the costs listed in the 2008 Regulatory Impact Analysis Statement, copied below, for implementing the SGaan Kinghlas - Bowie Seamount MPA plan are still accurate:
 - Departmental vessels in the vicinity of Bowie Seamount in conjunction with other monitoring and scientific research - 10 to 12 days annually costing DFO approximately \$200,000 to \$320,000.
 - DFO air surveillance patrols to monitor the Bowie Seamount MPA which will cost \$5,000 to \$10,000 per year (0.5 – 1.0 flight day per year).

⁶ Commissioner of the Environment and Sustainable Development, *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*, Chapter 1, "Fisheries and Oceans Canada – Canada's Oceans Management Strategy," Office of the Auditor General, Ottawa, 2005, p. 2.

- remote sensors that would cost about \$72,000 a year to operate?
4. If those figures are not accurate, can the Minister provide updated costs of implementing a management plan for the SGaan Kinghlas - Bowie Seamount MPA?
 5. What resources will be allocated to the SGaan Kinghlas - Bowie Seamount MPA Management Plan for this fiscal year, 2012-13, to allow for successful implementation?
 6. What resources will be allocated to the SGaan Kinghlas - Bowie Seamount MPA Management Plan over the next five years to allow for successful implementation?
 7. Can the Minister of Fisheries and Oceans respond to improvements WWF suggests for the SGaan Kinghlas - Bowie Seamount MPA Management Plan Advisory Committee public consultation process, such as:
 - a. Finalizing the Terms of Reference for the Advisory Committee?
 - b. Engaging the Advisory Committee in reviewing and developing the management plan?
 - c. Ensuring that a firm set of timelines, work items, dedicated personnel and resources to complete the management plan are put in place?
 - d. Scheduling the next set of meetings needed to complete these actions and complete the management plan?

With regard to the Oceans Act, answer these questions:

8. Can the Minister of Fisheries and Oceans investigate whether the Oceans Act is being violated as fifteen years after the Act came into force, there is still no national system of marine protected areas in place as required by s. 35 (2) of the Oceans Act?
9. Does the Minister of Fisheries and Oceans plan to review and improve the Oceans Act and associated regulations by giving MPA management planning a legislative basis?
10. If the answer to question 9 is No, how will the Minister in future ensure that management plans are prepared in a timely manner to protect MPAs?
11. What resources are being devoted to implement the National Framework for Canada's Network of Marine Protected Areas in this fiscal year?
12. What resources will be allocated to implement the National Framework for Canada's Network of Marine Protected Areas over the next five years?