OCEANS GOVERNANCE:
THE AUSTRALIAN INITIATIVE

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Australia, in company with many nations, has adopted a view of ocean management that goes beyond the prescription of rights and access contained in the United Nations Convention on the Law of the Seas and the species-based resource management regimes developed in the highly robust international competition for fish and marine mammals. Australia, again in parallel with others, views the resources of the seas as entirely analogous to those of the land. The seas represent the natural capital from which much of the world's protein is derived, target species exist within identifiable ecological systems, and their use and exploitation demand the application of best practice and best knowledge sustainable use policies. National and international polity has begun to recognize that the resources of the seas are finite, that many fish species are under heavy pressure, that seabed mining, shipping and other uses require an accepted multiple use framework within which to function.

A number of countries have made very significant strides in developing approaches to ocean management. Canada has had its Ocean Act for some years, administered through Fisheries and Oceans Canada. This agency has recently published its Ocean Strategy that is an excellent platform from which to implement this bold legislative adventure. As an attendee at the St John Newfoundland Ocean Summit in 1997, I could not help but be affected by the utter devastation wrought on a community and a culture by the collapse of a fishery. The strong new legislation that eventuated tightened a whole range of fisheries science, consultation and management processes and instituted the Ocean Strategy development that will constitute the frame of reference within which Canada's seas will be managed. South Korea has an Oceans Department, while Australia has an Oceans Policy without the benefit of legislation. The multilateral Pacific Island Forum has produced a principled Ocean Strategy, where the constituent island nations are truly oceanic, and where extraterritorial demands on resources are high.

As you are more than aware, in the United States, the Stratton Commission of 1969 led to the establishment of NOAA, a very considerable achievement, and the Coastal Zone Management Act of 1972. In January of 2000 the United States, following two years of intensive debate has an Ocean Act, but essentially it is confined to the establishment of a commission to write an ocean' s policy. Nevertheless, given the divergent forces at work this in itself is an achievement and a strong beginning. Undoubtedly the clear championing of such a development by the then President and Vice President, reinforced by the decision of President Bush to appoint the membership of the Commission is a major component in this outcome. However, all interested in the evolution of ocean policy look to the product of the Commission as it is now established. The astringent analysis in the eponymous "Abandoned Ocean: A History of United States Marine Policy" by Gibson and Donovan demonstrates how resistant the world's most powerful economy and military establishment is to any constraints on its use of the sea, although Drs Biliani Cicin-Sain, and Knecht take a more optimistic view in their "The Future of U.S. Ocean Policy".

In Australia we have created a non-statutory hybrid. Australia's ocean policy of 1998 is the first comprehensive attempt to adopt a large ecosystem management approach to the Exclusive Economic Zone. The policy incorporates approaches ranging from representative areas designated for high-level protection to the reinforcement of the economic value of the oceans' resources, to the nation if used sustainably and intelligently. Most of all the policy reinforces the argument that the management of the resources of the ocean requires an integrated approach to meet the multiple objectives of environmental, social and economic good. The natural capital of the sea is the asset on which the maritime economy is based.

The Australian policy was developed by extensive inter-departmental consultation, the views of an expert and representative advisory group, inter-governmental discussion and broad public consultation of the drafts. As might have been predicted, the various sectoral groups including the fishing industry and its departmental equivalent argued strongly that existing arrangements were satisfactory. Others, particularly those from the conservation NGOs, claimed that there existed an overwhelming case for a strong lead agency of government to ensure the proper integrated and sustainable management of the seas. The powerful economic agencies were able to convince government that environmental management and the implementation of ocean policy should be pursued through existing sectoral arrangements. A new Commonwealth-only Ministerial council has been established to oversee the implementation of the policy.

In Australia, the states of the federation have been heavily engaged in coastal management since the mid-1970s. Following a High Court (the equivalent of the US Supreme Court) decision in 1976 the Commonwealth of Australia, the federal government, was accorded sovereignty from the low water mark, but the states, since colonial times, had developed elaborate licensing and management arrangements for fisheries and vessel control. Therefore a legislated arrangement, the Offshore Constitutional Settlement, was put in place returning to the states control over the three nautical mile limit and granting seabed rights. Subsequent High Court decisions also allowed state law to follow a vessel or activity beyond the three nautical miles. Criminal

actions, breaches of safety regulation and fishing quotas or conditions established by states for inshore activities still prevailed where the same activity crossed the three nautical mile limit. However, the Commonwealth not only retains the rights to legislate in this area, but as well any federal legislation that affects activities below the low water mark overrides state law. To add to the complexity, some fisheries are managed by the states with others controlled by the Australian Fisheries Management Authority as commonwealth fisheries. All inshore and freshwater fisheries are state managed, while there is a mosaic of either Commonwealth or state managed fisheries offshore. As a result, recent highly contested actions in relation to the shrimp or prawn fishery in the Great Barrier Reef involved federal pressure on a state managed fishery, much of which is conducted in Commonwealth waters. This has meant that negotiations for a significant reduction in effort to ensure sustainability, and the introduction of mandatory modifications to fishing gear to reduce turtle capture and by-catch, meant long and frequently acrimonious negotiation between the Commonwealth and State governments and the industry. The industry expertly played each level of government off against the other.

Another feature of the implementation of the Ocean Policy at Commonwealth level has been the creation of the National Oceans Office. The Office is an executive agency of government, in that it is separate from each of the constituent departments whose ministers make up the board. In spite of its inclusive name the Office is as yet a federal only structure advising and servicing the federal only ministerial council. From the point of view of a state official, the great weakness is the disengagement of the states. Most states, over a period of 30 to 40 years, have invested both politically and financially in coastal protection legislation; marine protected areas, fisheries management and general land use planning regimes. Consequently, the states have exercised their traditional suspicion of the motives of the federal government, and consider the Commonwealth intervention as little other than a competition for power. Additionally, the Commonwealth has enacted new and powerful environmental legislation, the *Environment Protection and Biodiversity Conservation Act of 1998* which contains triggers for intervention such as “controlled activities” in Commonwealth waters, world

heritage areas and Ramsar sites and other convention based or multi-lateral agreement regimes. No Australian State, thus far, has signified its endorsement of the Oceans Policy, which is highly regrettable. Therefore, one of the great policy initiatives of this generation is not accepted as a national initiative, but is being perceived by the States as another federal intervention.

Nevertheless, the initial non-involvement by the states is rapidly being modified by the strategic decisions of the National Oceans Office and the quality of its engagement with the states. Under the policy the first Regional Marine Plan is being developed for the Southeast region of the EEZ. Although the bordering states have remained technically at arm's length, all but one is involved in what might be described as an active observer role. The second Regional Marine Plan is commencing for northern tropical waters, and the adjoining state and territory governments have agreed to become formally involved. This is without formal agreement to the National Ocean Policy, and is uncannily similar to the active non-signatory role that the US plays in relation to UNCLOS.

Additionally, Australia has a Council of Australian Governments where each of the "Chief Ministers" of the Commonwealth, states and territories – with some involvement of the peak local government body - supervise a series of topical Ministerial Councils (a traditional intergovernmental device in the Australian federation). One of these is the Natural Resource Ministerial Council comprised of ministers of primary industries (including fishing), environment and natural resource management (land, water, vegetation etc). Integrated Ocean Management is an agreed agenda item and in which the National Oceans Office is a full participating member. The description of IOM advanced by the Oceans Office and adopted by the Ministerial council is that it is "the coordination across sectoral activities - including decision-making and implementation - within and between spheres of government, based on consideration of ecological, social, cultural and economic values with the over-arching goal of assisting the ecologically sustainable development and use of the ocean and its resources."

The direction and rate of achievement of the goals that emerge from such a definition is

heavily dependent on the governance arrangements put in place. It would require nationally agreed outcomes, coordinating mechanisms, a robust stakeholder and community engagement framework with credible review and accountability mechanisms.

With such a potentially valuable contribution, there is then a challenge for Australia's Ocean Policy to "harden" its place in maritime management. It does not have legislative status, gaining its authority only from a federal cabinet decision.

The policy, though binding on all Commonwealth government agencies, does not give to the Chair of the Ministerial Council, or the ministerial council executive, direction over other agencies outside the Chair's portfolio. It is a consensual instrument, which in itself can be an advantage in developing non-threatening cooperation between agencies, but also has obvious disadvantages.

Unlike Canada, the initiative is without legislative backing and does not replace or modify the existing array of legislation that have marine impacts. There is no suggestion that some or all of existing legislation works consciously against integrated resource management, but inevitably the varying age, style and intent of these instruments not only create an unfocussed approach but can also introduce perverse elements.

Although the policy has compliance objectives, these too are "soft" and require little other than reporting by involved marine agencies. This exercise in itself is valuable and highlights limitations and gaps in operational policies. But the policy does not create any enforcement measures against Commonwealth agencies for non-compliance. It relies heavily on the relevant strengths of ministers within the ministerial council to establish enforcement through informal actions.

The policy as a soft instrument does not bind the states in the Australian federation. All of the states and the Northern Territory have extensive coastlines. Overtures from the Prime Minister for state engagement have been rejected. Given that the domestic politics of the oceans are most intense in the inshore areas, and given the jurisdictional

complexity, then not only the emerging active participation of the states is vital, but there accession to the policy within an agreed governance arrangement.

Unlike Canada and the United States, Australia has no coherent physical enforcement regime. Heavy reliance is placed on military resources for long-distance resource and border security, while inshore a highly varied fleet of Commonwealth – Customs and Quarantine vessels and aircraft, and the host of small state based fleets of vessels each operated by separate agencies, creates both command and resource dilemmas. It is clear that to properly manage its EEZ Australia will need to mirror the long established approaches adopted in North America.

Ocean governance to be effective must adopt genuine integrated natural resource management techniques reflecting the concept of the Triple Bottom Line as is now increasingly common terrestrially. Individual topical agreements such as MARPOL and OSPAR have been highly successful within their sectoral and regional bounds but the impacts on the oceans must comprehend the connectivities within complex systems. The few existing Multiple Use Marine parks in fact provide a template for the construction of the principles and the programs that would implement such a strategy. After all, few should dispute that the management practices in multiple use marine protected areas are no more than should be the norm for all of the seas. Pretty corals, unique geology, or the presence of charismatic marine mammals are only a motivation for the introduction of principles of sustainable use and a careful and integrated approach to the use of natural resources. In a perfect world of ocean governance such a regime would already have pre-existed.

Most importantly multiple use marine parks meet the Friedhem criterion of governmental institutions being in place.

The Great Barrier Reef Marine Park Authority in Australia is but one model of governance and government, while other countries have developed approaches that fit their constitutional, jurisdictional and cultural frame.

There is now extensive institutional and public consideration of ocean management issues. The community is increasingly sophisticated in this area, and no longer accepts that all that occurs is indisputably correct. Graphic images of grounded tankers, oiled seabirds, marine mammals and reptiles trapped in drift nets, leaking oil wells, inadequate waste water treatment and declining recreational fish stocks have begun to affect individuals.

Regrettably, sectoral industry views and political systems are lagging markedly. Bluefin tuna, distance fishing, the acrimonious whaling debate and difficult negotiations over straddling stocks are but symptomatic of the chase for resources, not their conservation. It would be disastrous but not unexpected if it took traumatic breakdowns in ocean systems before steps are taken.

Also, successful ocean governance must incorporate an ability to be fully involved in land use debates. International movements such as the Global Plan of Action against the Pollution of the Sea from the Land with attendant National Plans of Action are laudable, but do not have an impact beyond the power of influence. In Australia it is through domestic state-based legislation where present community based catchment management initiatives can be transformed into being responsible for the full range of downstream impacts. Certainly in Australia, integrated catchment management has focused on the lands of the major river basins and only rarely on river mouth discharge conditions. Not that this focus is other than understandable, given the state of degradation of so many river systems in Australia, but the result of altered river regimes, flow conditions, sediment, nutrient and chemical loads are as significant at the mouth as they are within the system.

In Australia multiple use marine parks have pioneered seamless management across jurisdictional boundaries in the sea and over islands. However, Australia is no more successful than other countries in transferring this approach to catchments. Indeed in Queensland we have a mass of water access, land use and agricultural regulation on land,

administered through traditional silo ministries and local government, with a range of cross-sectoral devices such as catchment management initiatives attempting to draw these together. There is separate coastal management legislation in most states in addition to state and Commonwealth environmental impact assessment statutes for major developments. To merge these into a more coherent administrative and legislative framework would require massive political will and drive. And, this in turn will only come from strong and converging community views. Positively, through a new joint Commonwealth-State program entitled the National Heritage Trust, new community based regional bodies will administer funds that will be heavily biased to water quality issues. In this next stage of national concern over land use and water quality impacts, and the downstream effects on coastal waters, the needs of the marine environment will become more sharply focused.

In the end, the management of the coasts and oceans comes down to political will. The Law of the Sea is an outstanding beginning, but its purpose is about peace and cooperation in the use of oceans. The nature of its formulas has attracted the lawyers and the commentators, but does little for biological integrity and the conservation of biodiversity. But the real pressure is domestic, and governments must develop a polity that goes beyond sectoral interests to the maintenance of the resource on which economic activity depends.

The maturity of ocean management will be judged by its ability to provide the framework for resource sustainability ahead of resource exhaustion.

Amory Lovins an author of "Natural Capitalism" has observed;

> We must consider oceans not fish
> Seas not ships
> Coasts not baselines.

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