

Towards an Integrated Oceans Management Policy for Fiji

Policy and Law Scoping Paper

Fiji Environmental Law Association
22 Dhanji Street, Samabula
P O Box 19196,
Suva
Phone: 330 0122
Website: www.fela.org.fj
Email: info@fela.org.fj



ISBN 978-982-01-0964-3



9 789820 109643



Acknowledgements

Producer

This study was produced jointly by Fiji Environmental Law Association and EDO NSW (a public interest environmental law organisation based in Australia).

Financial support was generously provided by the David and Lucile Packard Foundation.

FELA and EDO NSW would like to warmly thank all those who have contributed to the development of this study, in particular, WWF-Pacific and James Sloan.

This study was authored by staff and advisors of FELA (Kiji Vukikomoala and Patricia Parkinson) and EDO NSW (BJ Kim, Sarah Waddell (consultant), Megan Kessler, and Rachel Walmsley). Thanks are also extended to all of FELA's and EDO NSW's volunteers who have assisted with this project.

Citation

Fiji Environmental Law Association and EDO NSW. (2017). Towards an Integrated Oceans Policy for Fiji: Policy and Law Scoping Paper. The University of South Pacific Press, Suva.

Copyright

© 2017 Fiji Environmental Law Association

Reproduction of this publication for educational or other non-commercial purposes is authorised without prior written consent from the copyright owner provided that the source is fully acknowledged. Reproduction of this publication for resale or other commercial purposes is prohibited without prior written consent from the copyright owner.

Disclaimer

While all care has been taken in the preparation of this document, FELA and EDO NSW do not accept responsibility for the accuracy or completeness of its contents.

USP Library Cataloguing-in-Publication Data

Towards an integrated oceans management policy for
Fiji : policy and law scoping paper / Fiji Environmental Law
Association. -- Suva, Fiji : USP Press, 2017.

65 p. : col. ill. ; 29 cm.

ISBN 978-982-01-0964-3

1. Marine resources--Government policy--Fiji. 2. Marine
resources--Economic aspects--Fiji. 3. Coastal zone management
--Fiji. I. Environmental Law Association (Fiji).

GC1023.98.F5T69 2017

333.9164--dc23

Published by : USP Press, The University of the South Pacific
Year : 2017

Contents

EXECUTIVE SUMMARY	iii
1. Introduction.....	1
2. Key concepts	4
3. Origins and adoption of IOM policy internationally	7
4. Legislation relating to ocean resources in Fiji	10
5. Policies relating to oceans management	14
6. Major issues and gaps related to an integrated approach	19
7. Benefits of a Fiji IOM policy	23
8. Risks and costs in embarking on IOM policy-making in Fiji.....	25
9. IOM policy case studies.....	29
10. Recommendations for a way forward to achieve greater integration	33

EXECUTIVE SUMMARY

Fiji has a total land area of approximately 18,700 km² and is made up of over 300 Islands, one third of which are inhabited.¹ Fiji's coastline has been estimated to be more than 1,130 km in length. The area covered by fringing and barrier reefs is about 6,704 km², while mangroves cover an area of 385 km².² The total expanse of Fiji's ocean area has been summarised as follows:³

Fiji has extended sovereignty of over 130,450 km² of archipelagic waters and 45,000 km² of territorial waters. Fiji has sovereign rights over the resources in its EEZ, an area beyond archipelagic baselines totalling 1.29 million km² (more than 60 times the land territory).

Fiji is an archipelagic state under international law.⁴ Its ocean area provides opportunities for Fiji's future development alongside obligations for sustainable use of its ocean resources.

In the lead up to the UN Ocean Conference, co-chaired by Fiji in June 2017, Fiji commenced the process of developing Fiji's Ocean Policy Framework (the **Ocean Framework**). The information in this Scoping Paper was provided to the parties involved in developing the Ocean Framework and is directly relevant to that process. Stakeholders appear hopeful that the Ocean Framework will provide a strong foundation for moving forward with an integrated approach to oceans policy in Fiji. The Ocean Framework may be the first step in the development of an extensive integrated oceans management (**IOM**) policy for Fiji.

An IOM policy is a national strategic policy document that provides for a 'planned system-wide approach to ocean management'.⁵ This Scoping Paper considers the question of whether Fiji should develop an IOM policy and, if so, how such a policy should be developed. To this end, this paper:

- explains what an IOM policy is (section 1);
- identifies some key concepts that may underlie or be incorporated in an IOM policy (section 2);
- outlines the origins and adoption of IOM policy internationally (section 3);
- briefly outlines the law relevant to ocean resources in Fiji (section 4);
- indicates the direction of recent policy-making relating to oceans management (section 5);
- identifies some key issues and gaps in the policy framework (section 6);
- considers how an IOM policy might benefit policy-making for oceans management in Fiji (section 7);
- identifies key risks and costs in embarking on preparation of an IOM policy (section 8);
- provides insights from 3 cases studies from Australia, Canada and the United Kingdom (section 9); and

¹ Ministry of Strategic Planning, National Development and Statistics, *Green Growth Framework for Fiji: Restoring the Balance in Development that is Sustainable*, 2014, 10, 43.

<http://pafpnet.spc.int/pafpnet/attachments/article/475/GREEN%20GROWTH%20FRAMEWORK.PDF>

² MACBIO, *Marine and Coastal Biodiversity Management in Pacific Island Countries*, Fiji, <http://macbio-pacific.info/fiji/>

³ Ibid.

⁴ 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) Art. 46; Marine Spaces Act s.2(1).

⁵ Martin Tsamenyi, 'A Pacific Regional Ocean Policy' (Centre for Maritime Policy, University of Wollongong, 2000), 1.

- sets out some next steps that might be taken in the development of an IOM policy (section 10).

The analysis undertaken in this paper indicates that an IOM policy adapted to the Fiji context could have a useful role to play in Fiji as it could facilitate a more wide-ranging, systematic and integrated approach to oceans management.

The preparation of and the process towards an IOM policy presents an opportunity to generate leadership and networking between all stakeholders. It also potentially enables a principled and democratic approach to improving management of Fiji's ocean area. An IOM policy could be developed in parallel with implementation of Integrated Coastal Management (ICM) policy and other relevant policies in Fiji. In doing so, it could provide guidance for the gradual extension of the geographic scope of ICM policy, although care would be needed so as not to detract from implementation of an ICM policy or other important policy initiatives taking place in Fiji.

If Fiji were to embark on the path of preparing an extensive IOM policy, possible steps in this process might include:

- development of a discussion paper which would, among other things: set out what a suitable IOM policy and process could look like for Fiji, borrowing on examples from the Pacific and analysing the policy and law framework relevant to a Fiji IOM policy; discuss key concepts and issues for developing an IOM policy; and, identify appropriate content and structure for Fiji's IOM policy;
- formation of a ministerial advisory group that would drive the policy development process; and
- appropriate consultations with all relevant stakeholders on the preparation of IOM policy papers, relevant terms of references, and the content of an IOM policy.

1. Introduction

What is an integrated oceans management policy?

An integrated oceans management (IOM) policy is a national strategic policy document that provides for a 'planned system-wide approach to ocean management'.⁶ It covers all sectors and all levels of government whose scope of activity relates to the use of ocean resources. A dictionary understanding of 'integrate' is to bring together (parts) into a whole, to make up or complete as a whole or unified system; something will be 'integrated' when it is balanced, whole and harmonious.⁷ Therefore, an IOM policy is a formal commitment by the Government to a course of action that will achieve a balanced and holistic approach to ocean management.

By way of example, an IOM policy may delineate what a country understands by ocean resources and make commitments on behalf of the Government, for example, to improve management of fisheries; promote marine tourism; develop aquaculture; regulate extraction of offshore petroleum and minerals, shipping and pollution; better provide for conservation of biodiversity; assist new industries such as development of pharmaceutical, biotechnology and genetic resources as well as alternative energy sources such as wave and tidal power; recognise Indigenous peoples' interests, rights and responsibilities; identify steps to help mitigate and adapt to climate change; and endorse measures to protect natural and cultural heritage. It will also provide detail as to how these goals will be achieved.

UNESCO states that 'in essence' an integrated approach means that:⁸

sector policies will have to be subsidiary to the principles and standards of a common National Ocean Policy, i.e. that objectives, programs and measures (policies) to manage the marine environment and its resources will be developed in such a way that the different objectives, programs and measures are mutually consistent across different sectors. This requires that the instrument that fixes the national policy be explicit in setting the standards, baselines and benchmarks upon which that consistency will be measured.

As a form of *strategic policy*, IOM policy presents a vision that is to apply across *all levels of government*, that is, central, provincial, local and village level government. It formulates a multipronged approach as to how desired goals will be met. The Government would be required to identify problems, assess the feasibility of alternative courses of action and select approaches to overcome them. A *mix of approaches* may be announced including institutional design (new or revised institutional structures), new or amended legislation, new management activities or programs, coordination mechanisms, economic incentives, education and awareness raising, training, and specific budget allocation. Ideally, to integrate the responsibilities of all relevant administrative agencies, IOM policy will set out the *full range of measures* available at *each level of government* in achieving its goals.

⁶ Martin Tsamenyi, above n 5, 1. See also the discussion in US National Ocean Service, *Global Leadership in Integrated Management of the Ocean*, at <http://oceanservice.noaa.gov/GLIMO/welcome.html>:

Integrated ocean management is a difficult concept to explain. Experts call it a decision-making process that relies on diverse types of information to determine how ocean and coastal resources or areas are best used and protected. Integrated ocean management, therefore, combines (integrates) social, economic, technical, and scientific information to help resource management agencies understand the trade offs and consequences of their decisions. Integrated ocean management also brings together various organizations to solve problems that may extend beyond the traditional roles and responsibilities. The objective of integrated management is decision making that is balanced between unchecked resource use and full-scale resource preservation.

⁷ A Delbridge, JRL Bernard, D Blair, P Peters and S Butler, *The Macquarie Dictionary* (2nd Ed), The Macquarie Library Pty Ltd, 1996.

⁸ UNESCO, *National Oceans Policy Basic Texts*, IOC Technical Series 75, 2007, 2-3 <http://www.ioc-unesco.org/images/stories/LawoftheSea/Documents/NationalOceanPolicy/nop%20web.pdf>.

In relation to the scope of the marine area covered by an IOM policy, *ocean* would cover the sea where Fiji has sovereign rights. This includes the sea from the low-water mark to the full extent of the Exclusive Economic Zone (**EEZ**). In this area, a nation has sovereign rights for exploring, exploiting, conserving and managing living and non-living resources of the water column and underlying continental shelf.⁹

IOM policy may also cover the use of coastal resources and catchment areas. It is widely recognised by marine scientists that environmental conditions on land will affect coastal waters which, in turn, will impact on the wider marine environment. This has been referred to as the catchment-coast-ocean continuum. Common issues will arise relating to the management of resources in a country's coastal regions and wider marine area. A choice may emerge between embarking on an IOM policy or an integrated coastal management (**ICM**) policy. ICM may be incorporated into an IOM policy from the beginning or, alternatively, an ICM policy may be developed in parallel with an IOM policy with the expectation that they will become closely linked over time.¹⁰ Whichever approach is adopted, it will be important ensure the policies are consistent and extend to catchment areas.

The following table presents a summary of the points of distinction between non-integrated management and IOM.

Issue	Current framework	IOM policy
General Approach	Policy-making is carried out by individual sectors such as fisheries, tourism, oil and gas, shipping, conservation.	Consensus between competing sectors is achieved and expressed in IOM policy providing an overarching framework for future sectoral policy-making.
Focus on ocean environment	Some overarching policy-making is carried out regarding biodiversity conservation, Green Growth and climate change.	The ocean environment becomes the focus for policy-making whilst also incorporating issues relating to Green Growth, biodiversity conservation, climate change and so on.
Timeframes	Sectoral planning and management is short-term and within a narrow sectoral perspective.	Sectoral planning and management also includes a long-term perspective that fits within the goals of IOM.
Relationship between sectoral policies	Sectoral policies may compete against each other because of conflicting interests.	Competing sectoral interests are resolved and prioritised within the broader framework of IOM.
Coordination	Little coordination between levels of government.	All levels of government are involved in the preparation and implementation of policy and coordination mechanisms are established.
Management	Management focuses on parts of an ecosystem rather than the whole (such as a particular fish stock).	Management focuses on relationships, processes and trade-offs within ocean ecosystems.

⁹ It may also include the continental shelf beyond the EEZ for the purposes of exploring and exploiting the mineral and other non-living resources of the seabed and subsoil, together with sedentary organisms. Here a nation will have jurisdiction with regard to marine scientific research as well as other rights and responsibilities where the continental shelf beyond the EEZ has been determined by the *United Nations Commission on the Limits of the Continental Shelf*: United Nations, Oceans and Law of the Sea, Commission on the Limits of the Continental Shelf http://www.un.org/depts/los/clcs_new/commission_purpose.htm

¹⁰ In Australia, it was anticipated that policy formulation would become more closely linked over time with possible integration of coastal and ocean management activities: Natural Resources Management Ministerial Council, 2006 *Framework for a National Cooperative Approach to Integrated Coastal Zone Management* <https://www.environment.gov.au/system/files/resources/5ce3ba77-4b62-43f0-a1e0-4a1a2266500e/files/framework.pdf>, 14.

Issue	Current framework	IOM policy
Measures to protect species	Measures are taken to protect individual species.	Measures are taken to protect multiple species within identified ecosystems.
MPA's	Marine Protected Areas are established to protect vulnerable or important coastal or marine ecosystems.	A network of Marine Protected Areas is established to protect vulnerable or important ocean ecosystems and may be located with a broader regime of Marine Spatial Planning.
Human activities	Human activities are evaluated as individual activities.	The impact of human activities is evaluated within an ecosystem framework.
Use of resources	Individual sectors are responsible for managing the use of the resources falling within their sector.	Use of resources by each sector is guided by an overarching management regime with agreed goals applicable to an identified region or ecosystem.
Scientific monitoring	Scientific monitoring is narrowly focused.	Scientific monitoring is geared towards adaptive management.
Scientific research	Scientific research tends to be single purpose observation with little consultation or coordination.	Shared and standardised observation in scientific research.

Table 1: Comparison between existing arrangements and IOM.¹¹

What is an integrated oceans management policy for Fiji?

To achieve an IOM policy means that Fiji must decide the overriding principles that it wants to apply to the use of its ocean spaces and what it means by its ocean resources. To do this, Fiji will have to recognise the importance of the ocean through commitments to, among other things:

- improve the sustainable management of its ocean resources including fisheries for subsistence and commercial purposes;
- promote marine tourism;
- promote sustainable aquaculture; and
- better provide for the conservation of biodiversity and genetic resources.

At the same time, an IOM policy means that Fiji must balance and regulate other important human uses of the ocean so that any adverse effects from these uses accord with the governing principles of its IOM policy and minimise negative impacts on the commitments above. This will require commitments to, among other things:

- regulate shipping, pollution and mining; and
- encourage alternative energy sources like wave and tidal power.

In formulating its IOM policy, Fiji must also take into account and balance all pre-existing use rights to its ocean spaces including the rights, interests and responsibilities of customary, artisanal and commercial fishers.

What is set out in Fiji's IOM will then guide all government decisions towards the use of Fiji's ocean spaces.

¹¹ Also, see NOAA's explanation of ecosystem-based management as cited by Rudolfo Dorah, 'Towards Integrated National Ocean Policy in the South Pacific Competing and Conflicting Issues in Ocean Policy: Solomon Islands', UN-Nippon Fellow, 2007-2008, 88.

2. Key concepts

It is crucial that in developing an IOM policy that Fiji creates a policy that is appropriate and suited to the Fiji context and that this IOM policy emerges from a participatory and consultative process. As part of that process, Fiji must decide the overriding principles that it wants to apply to the use of its ocean spaces.

Some of the concepts that may underlie or be incorporated in a Fiji IOM policy are briefly set out below.¹² These concepts are well known internationally, and in developing its IOM policy Fiji will have to adapt and suit these concepts to the Fiji context.

Sustainable use

‘Sustainable use’ refers to the use of components of biological diversity in a way and at a rate that ‘does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.’¹³

Ecosystem-based management

Ecosystem-based management (**EBM**) aims to ensure the maintenance of viable populations of species *in situ*. EBM recognises the full array of interactions within an ecosystem, including humans, rather than considering single issues, species, or ecosystem services in isolation.¹⁴ When applied to management of MPAs, it seeks to assure representation of all native ecosystem types across their natural range within the protected area. However, more broadly, IOM policy may officially endorse EBM as the basis for marine spatial planning (MSP). EBM has been described as a paradigm shift in that it allows for more focus on ecosystem relationships, processes and tradeoffs instead of managing ecosystem parts from a sectoral point of view. This is important as it allows ocean and marine resources management approaches to be more sensitive and respond to the needs of both people and ecosystems.¹⁵ Furthermore, it aims to maintain evolutionary and ecological processes, and accommodate human use and occupancy within these constraints.¹⁶

The precautionary approach

The precautionary approach provides that the absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures. The precautionary approach has a central role in oceans management.

¹² The 2011 IUCN Guidelines are broadly consistent with the 16 concepts identified in FELA’s recent coast fisheries paper: Fiji Environmental Law Association and EDO NSW, *Regulating Coastal Fisheries: Policy and Law Discussion Paper* (University of South Pacific Press, 2016). These concepts specifically focussed on fisheries issues, however, they are broadly relevant to MPAs. They are: (1) Obligation of States to protect and preserve the marine environment; (2) The ecosystem approach; (3) Community based resource management; (4) Integrated marine and coastal areas management; (5) The precautionary approach; (6) Adaptive management; (7) Best available science; (8) Research, data collection and analysis; (9) Effective legal and administrative frameworks; (10) Protecting the rights of small-scale fishers and CFROs; (11) Addressing identified target-issues; (12) Marine and coastal protected areas; (13) Management plans; (14) Monitoring, compliance and surveillance (MCS) and enforcement; (15) Maximum sustainable yield; (16) Providing education, training, resourcing and support to communities. In addition, WWF’s 15 “Principles for a Sustainable Blue Economy” will also be relevant to the development and implementation of an IOM policy:
<http://d2ouvy59p0dg6k.cloudfront.net/downloads/15_1471_blue_economy_6_pages_final.pdf>.

¹³ Convention on Biological Diversity, 31 ILM 818 (1992), <https://www.cbd.int/sp/targets/>, art. 2.

¹⁴ Ecosystem Based Management definition, http://www.ebmtools.org/about_ebm.html.

¹⁵ Dorah, above n 11, 88.

¹⁶ Ecosystem Based Management definition - http://www.ebmtools.org/about_ebm.html.

Marine Spatial Planning

A key component of IOM policy in some countries has been the introduction of a system of MSP. MSP is being advocated internationally through bodies such as UNESCO¹⁷ and the European Union,¹⁸ and is being increasingly applied by governments around the world.¹⁹ In July 2014, the EU issued a *Directive of the European Parliament and of the Council* establishing a framework for maritime spatial planning.²⁰ MSP can be described as ‘a public process of analysing and allocating the spatial and temporal distribution of human activities across marine areas to achieve ecological, economic, and social objectives that usually have been specified through a political process. Characteristics of MSP are that it is ecosystem-based, area-based, integrated, adaptive, strategic and participatory.’²¹ MSP involves mapping and zoning for appropriate resource use and conservation.²² In effect, the system of planning and management that applies to the terrestrial environment is adapted for the purpose of extending it to coastal and marine areas. Zoning is strongly integrated as it requires all resource users to comply with zoning requirements and limitations.

Integrated Coastal Management

Similarly to the goals of IOM, Integrated Coastal Management (**ICM**) or Integrated Coastal Zone Management (**ICZM**) adopts EBM objectives of long-term sustainability of coastal ecosystems through integration of management across sectors, levels of government users, stakeholders, and spatial and temporal scales.²³ It has been defined as an approach that ‘brings together all decision-making agencies to resolve issues so as to ensure integration among their existing policies and plans to ultimately maintain, restore and improve the quality of coastal ecosystems and the communities they support’.²⁴ In addition, a holistic approach to IOM will ensure policies extend to catchment areas, recognising the catchment-coast-ocean continuum.

Marine protected areas

Marine protected areas (**MPAs**) include marine and coastal protected areas and are internationally recognised as necessary for protecting marine biodiversity. MPAs can be zoned for various uses including the exclusion of extractive uses entirely (no take zones) or the management and restriction of extractive activities (partial protection zones). While MPAs may also be a fisheries management tool, MPAs will dramatically reduce or alter pre-existing use rights to ocean space and so the process by which they are created and designated is important in any context, but particularly in the Fiji context.

¹⁷ UNESCO, *Marine Spatial Planning Initiative*, 2014, <http://www.unesco-ioc-marinesp.be/>. See also Charles Ehler, ‘A Guide to Evaluating Marine Spatial Plans’, Paris, UNESCO, 2014. *IOC Manuals and Guides*, 70; ICAM Dossier 8 <http://unesdoc.unesco.org/images/0022/002277/227779e.pdf>.

¹⁸ European Commission, ‘Maritime Spatial Planning for the EU’s seas and oceans: what’s it all about?’ *European Union*, 2010, http://biblio.central.ucv.ro/bib_web/bib_pdf/EU_books/0150.pdf.

¹⁹ UNESCO, Marine Spatial Planning Initiative, http://www.unesco-ioc-marinesp.be/msp_around_the_world?PHPSESSID=pnbia9l06cb06q8q8darivs1r3

²⁰ *Directive of the European Parliament and of the Council Establishing a Framework for Maritime Spatial Planning*, Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.257.01.0135.01.ENG

²¹ UNESCO, *Marine Spatial Planning Initiative* 2014, http://www.unesco-ioc-marinesp.be/marine_spatial_planning_msp

²² For example, European Directive, above n 20, Art. 8(1): ‘When establishing and implementing maritime spatial planning, Member States shall set up maritime spatial plans which identify the spatial and temporal distribution of relevant existing and future activities and uses in their marine waters...’

²³ ME Portman, LS Esteves, XQ Le, and AZ Khan, ‘Improving integration for integrated coastal zone management: An eight country study’, 439 *Science of the Total Environment* (2012) 94-201.

²⁴ Clarke, C., M. Canto, S. Rosado. 2013. *Belize Integrated Coastal Zone Management Plan*. Coastal Zone Management Authority and Institute (CZMAI), Belize City <http://www.coastalzonebelize.org/wp-content/uploads/2013/06/DRAFT%20BELIZE%20Integrated%20Coastal%20Zone%20Management%20Plan%20MAY%2020.pdf>.

Adaptive management

The concept of adaptive management has developed in significance, particularly in the context of accommodating uncertainty. Adaptive management allows managers to evaluate how effectively tools and mechanisms (such as zoning, limitations on extraction, management regimes) are contributing to desired goals and, when appropriate, to take action to fill the gaps. It provides an iterative process of decision making, whereby management goals and methods are able to change over time as new information is obtained or new challenges develop.²⁵

Multiple use management

The use of a coastal or marine area by more than one sector is referred to as 'multiple use'. Effective multiple use management is fundamental to achieving sustainable use. A given area may support a range of activities such as subsistence or commercial fishing, tourism, and transport; the rights of traditional owners may need to be protected and the area may also be used for scientific research.²⁶ In these circumstances, all the environmental, economic, and social benefits and impacts of resources use need to be considered.

Community-based resource management

The benefits of community-based resource management (**CBRM**) of conservation areas and particular resources such as inshore fisheries are becoming more widely acknowledged. It is now considered that, as far as possible, resource management should reside in the local community. CBRM requires a legal and regulatory framework that recognises and enables community management and the development of community management programs. These, in turn, require communities to be informed and empowered.²⁷

Protecting customary use of resources

The obligation to protect customary use of natural resources by traditional communities is also now widely recognised internationally.²⁸ Protection may be provided by official acknowledgement and establishment of processes related to customary use rights or other forms of resource tenure.²⁹ A proper understanding and appreciation of these customary rights and an acknowledgement of these rights and an indication as to appropriate processes for their protection may be included in an IOM policy.

²⁵ Rebecca Weeks and Stacy D Jupiter 'Adaptive Co-management of a Marine Protected Area Network in Fiji', 7 (6) *Conservation Biology*, 1234-1244 at 1235 citing Ban et al. (2011), Walters and Hilborn (1978), Cinner et al. (2012).

²⁶ Managing multiple use has been a major responsibility of the Great Barrier Reef Marine Park Authority <http://www.gbrmpa.gov.au/managing-the-reef/how-the-reefs-managed/Managing-multiple-uses>

²⁷ Fiji Environmental Law Association and EDO NSW, *Regulating Coastal Fisheries: Policy and Law Discussion Paper* (University of South Pacific Press, 2016), Appendix A, 3.

²⁸ Fiji Environmental Law Association and EDO NSW, above n 27, Appendix A, 11-12.

²⁹ In the local context, the rights of customary users on the one hand, and small-scale fishers who are not customary rights holders on the other, may raise unique issues and require specific consideration.

3. Origins and adoption of IOM policy internationally

International Law

The origins of IOM concepts can be traced to international environmental law. The *UN Convention on the Law of the Sea 1982* creates an obligation on states to protect and preserve the marine environment (Article 192) and, hence, a nation is required to develop an approach to achieve these goals. The objectives of the *Convention on Biological Diversity 1992*³⁰ (CBD) include the conservation of biological diversity and the sustainable use of its components (Article 1). This points to the need to integrate both conservation and use of natural resources. The CBD is a source document for the development of marine protected areas.³¹ However, as a broader concept, the integrated approach was endorsed in the CBD where it stated that each Contracting Party shall '[i]ntegrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies'.³²

The UN *Framework Convention on Climate Change 1992* (UNFCCC)³³ requires the integrated approach in the context of adaptation to climate change. It was also identified in *Agenda 21*, prepared as part of the *1992 United Nations Conference on the Environment and Development in Rio* (UNCED) where it is mentioned in the first recommendation in Chapter 17 on the protection of the oceans and coasts:³⁴

The marine environment - including the oceans and all seas and adjacent coastal areas - forms an *integrated whole* that is an essential component of the global life-support system and a positive asset that presents opportunities for sustainable development. International law, as reflected in the provisions of the United Nations Convention on the Law of the Sea ... sets forth rights and obligations of States and provides the international basis upon which to pursue the protection and sustainable development of the marine and coastal environment and its resources. This requires *new approaches* to marine and coastal area management and development, at the national, sub regional, regional and global levels, *approaches that are integrated in content and are precautionary and anticipatory in ambit.* (emphasis added)

In 1995, in order to implement the CBD objectives, Contracting Parties adopted the *Jakarta Mandate on Marine and Coastal Biological Diversity*³⁵ (the **Jakarta Mandate**), which represents global consensus on the importance of marine and coastal biological diversity. Its

³⁰ Convention on Biological Diversity, above n 13. Given the anticipatory nature of IOM policy-making, see also the Precautionary approach as defined in Principle 15.

³¹ Convention on Biological Diversity, above n 13. Particularly the provisions for 'in situ' conservation set out in article 8.

³² Convention on Biological Diversity, above n 13, Article 6(b).

³³ 31 ILM 849 (1992). This is probably more relevant to coastal management - see the commitments listed in article 4 'taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances' include a commitment to '[c]ooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management' (art 4(1)(e)).

³⁴ Agenda 21, Chapter 17, *Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources*, A/CONF.151/26 (Vol. II), 13 August 1992 http://www.un.org/depts/los/consultative_process/documents/A21-Ch17.htm.

³⁵ The Jakarta Mandate, *Report of the Second Meeting of the Contracting Parties to the CBD*, Annex II, Decision II/10, UN Doc UNEP/CBD/COP/2/19/ 30 November 1995 <http://www.cbd.int/doc/decisions/cop-02/full/cop-02-dec-en.pdf>; discussed by Bénédicte Sage-Fuller, *The Precautionary Principle in Marine Environmental Law: With Special Reference to High Seas Vessels*, (Routledge 2013) 188; Md. Saiful Karim and Ridwanul Hoque, 'Integrated Coastal Zone Management and Sustainable Development of Coastal Area: A Short Overview of International Legal Framework' in Erlend Moksness et al (eds), *Integrated Coastal Zone Management* (Wiley-Blackwell 2009) 170-177, 173-4.

1998 work programme is founded on six principles that overlap with concepts within IOM, namely:³⁶

- the ecosystem approach;
- the precautionary principle;
- the importance of science;
- that full use should be made of the roster of experts;
- involvement of local and indigenous communities (traditional knowledge); and
- three levels – national, regional and global – of programme implementation.

One of the five key work program elements of the Jakarta Mandate is Integrated Marine and Coastal Area Management (**IMCAM**) which directly relates to the preparation of IOM policy.

The Johannesburg *Plan of Implementation of the 2002 World Summit on Sustainable Development* called for the promotion of integrated coastal and ocean management at the national level and the implementation of Chapter 17 of *Agenda 21*.³⁷ More recently, the outcome document arising from the 2012 United Nations Conference on Sustainable Development (Rio+20) entitled *The Future We Want* stated in relation to the oceans and sea that '[w]e recognize that oceans, seas and coastal areas form an integrated and essential component of the Earth's ecosystem and are critical to sustaining it'.³⁸

In addition, the UN Fish Stocks Agreements adopted in 1995 have contributed to the development of national ocean policies.³⁹ The FAO *Code of Conduct for Responsible Fisheries* (and related FAO guidelines and documents)⁴⁰ refers to the integration of fisheries into coastal area management.⁴¹

The most recent and arguably the most significant international law development is the *UN Sustainable Goal 14* to 'Conserve and sustainably use the oceans, seas and marine resources for sustainable development' that was adopted as part of the UN 2030 Agenda for Sustainable Development at the UN Sustainable Development Summit in 2015. To support the implementation of SDG 14, a high level *United Nations Conference to Support the Implementation of Sustainable Development Goal 14* was convened at United Nations Headquarters in New York from 5 to 9 June 2017, coinciding with World Oceans Day, co-hosted by the Governments of Fiji and Sweden. A list of voluntary commitments for the implementation of Goal 14, will be announced at the Conference. The main outcome will be an intergovernmental Declaration, in the form of a "Call for Action" to support the implementation of SDG 14.

International Practice

Since the 1992 Rio Conference, ocean policies have been created and implemented at national and regional levels. Regional ocean policies have been implemented in the EU,⁴²

³⁶ The Jakarta Mandate – from global consensus to global work: <https://www.cbd.int/doc/publications/jm-brochure-en.pdf>, 6.

³⁷ Johannesburg *Plan of Implementation of the 2002 World Summit on Sustainable Development*, http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf, Art. 30(b).

³⁸ Resolution adopted by the General Assembly on 27 July 2012 *The Future We Want – Outcome Document*, A/RES/66/288 Art. 158, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E

³⁹ Tsamenyi, above n 5, 2.

⁴⁰ FAO, *Code of Conduct for Responsible Fisheries*, FAO Doc, 95/20/Rev/1 (1995) <http://www.fao.org/docrep/005/v9878e/v9878e00.htm>, [accessed 25 May 2016].

⁴¹ *Ibid*, Article 10.

⁴² Ian Heijne, 'IMP Manual', *Integrated Maritime Policy for the Mediterranean*, November 2012, 11.

the East Asian Seas, and are in a preparatory stage in Sub-Saharan Africa.⁴³ In 2002, Pacific nations adopted the Pacific Island Regional Ocean Policy.⁴⁴

As at 2015, countries at the implementation stage included Australia (1998), Brazil (1980 and 2005), Canada (1996), Japan (2007), Jamaica (2002), Mexico (2006), Norway (2008), Portugal (2006 and 2013), Russian Federation (2001), United Kingdom (2009, 2010, and 2013), United States (2010) and Vanuatu (2016). Countries in the formulation stages included New Zealand, the Philippines, Vietnam and Papua New Guinea. India is still in a preparatory stage.⁴⁵ According to UNESCO, China (1998)⁴⁶ and Colombia⁴⁷ have also embarked on preparing national ocean policy.⁴⁸

⁴³ See, eg, Camille Mageau, et al, 'Ocean Policy: A Canadian Case Study' (2010) in Biliiana Cecin-Sain, et al (eds), *Integrated National and Regional Ocean Policies: Comparative Practices and Future Prospects* (United Nations University Press, forthcoming) 82-83. <<https://ssrn.com/abstract=2112275>>; *Evaluation of Parks Canada's Phase One of Oceans Action Plan* (Office of Internal Audit and Evaluation, Parks Canada, 2007) 11-16.

⁴⁴ Tsamenyi, above n 5, 1.

⁴⁵ See Biliiana Cecin-Sain, David Vanderzwaag, Miriam C Balgos (eds), above n 43.

⁴⁶ White Paper on the Development of China's Marine Programmes, <http://ioc-unesco.org/images/stories/LawoftheSea/Documents/NationalOceanPolicy/nop.china.pdf>

⁴⁷ National Ocean and Coastal Regions Policy, <http://ioc-unesco.org/images/stories/LawoftheSea/Documents/NationalOceanPolicy/nop.colombia.pdf>

⁴⁸ See the list of where MSP is happening around the world – UNESCO Marine Spatial Planning Initiative http://www.unesco-ioc-marinesp.be/msp_around_the_world?PHPSESSID=2tf1o1506kt1ov1p94vpm8s5n6

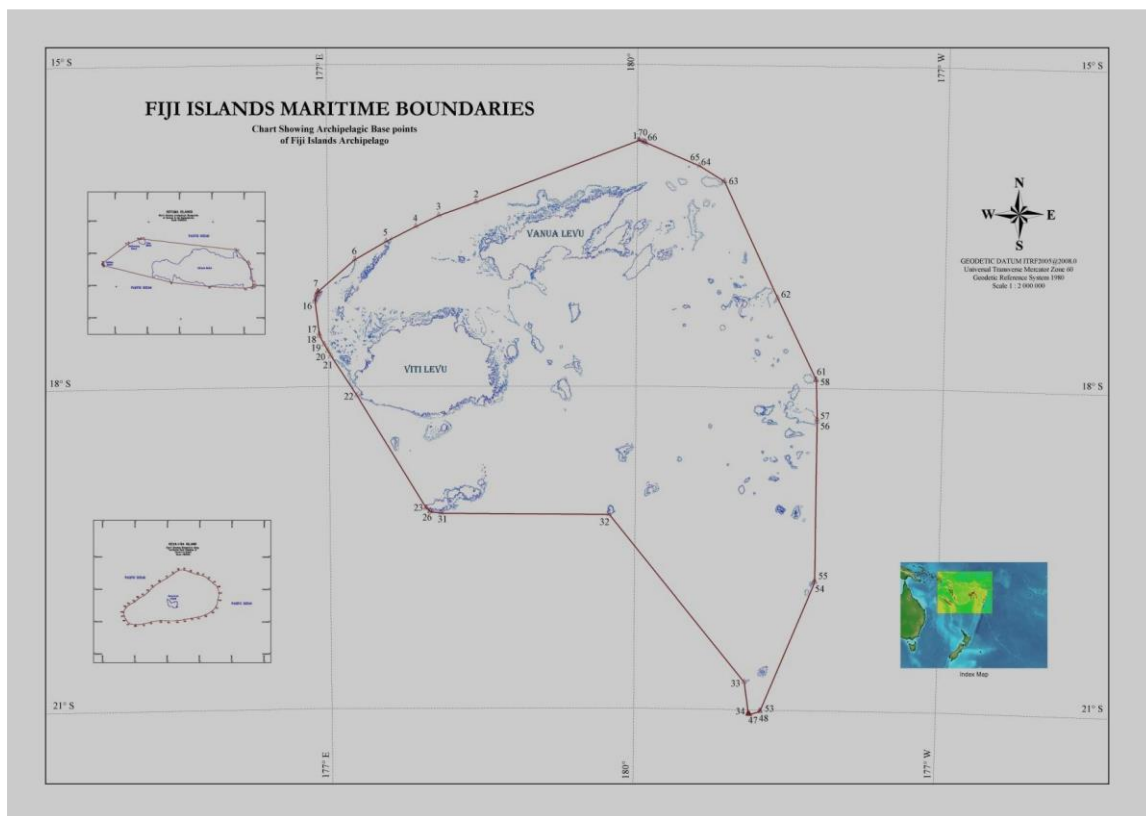
4. Legislation relating to ocean resources in Fiji

Jurisdictional boundaries

A review of all legislation relating to the use of ocean resources in Fiji is beyond the scope of this paper. The following merely serves to 'set the scene' for further analysis of the legislative framework.

The *Marine Spaces Act 1978* defines archipelagic waters, territorial seas and the EEZ (s.4). It also establishes that the sovereignty of Fiji extends beyond its land territory and internal waters over its archipelagic waters and territorial seas and to the airspace as well as to the seabed and subsoil thereunder (s.9(1)). It notes that within the EEZ, Fiji has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living of the seabed and subsoil and the superjacent waters (s.9(2)). It also contains provisions about the management and conservation of fisheries in archipelagic waters and the EEZ, including the licensing of foreign fishing vessels. The *Continental Shelf Act 1970* serves to define the continental shelf in Fiji.

Fiji has negotiated its maritime boundaries including the review and verification of revised archipelagic baselines in accordance with UNCLOS and the sharing of the EEZ.⁴⁹



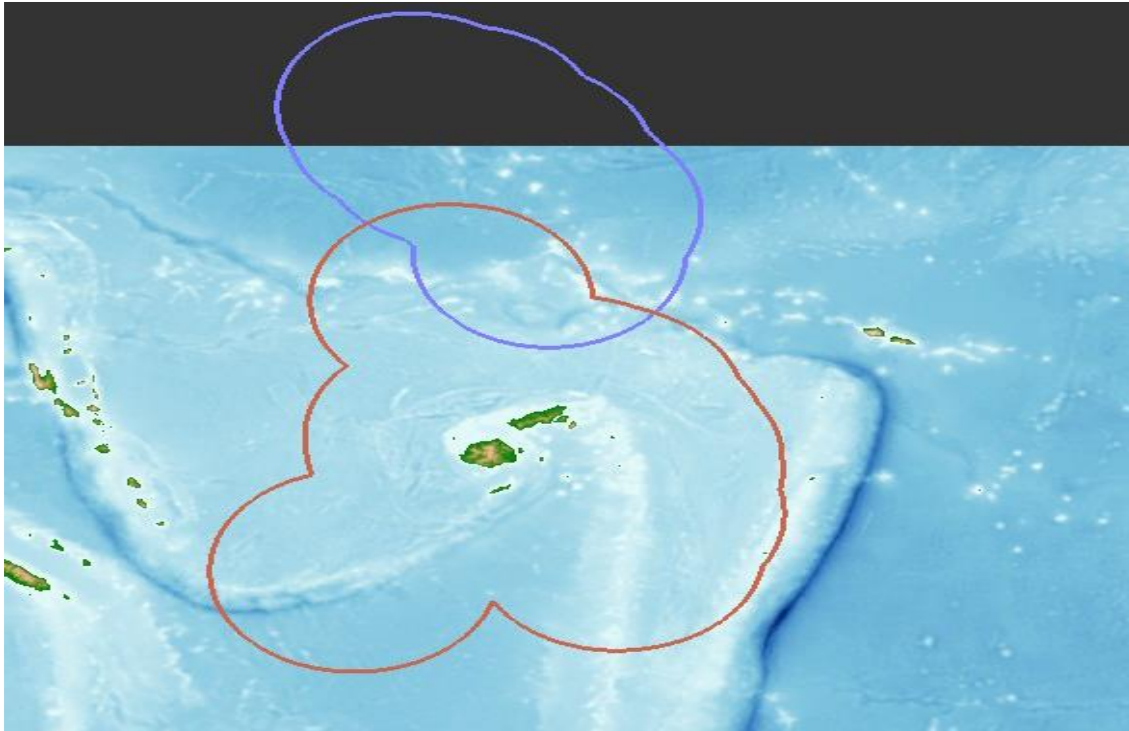
Map: Fiji's maritime boundaries (updated in 2012).⁵⁰

In relation to the scope of the marine area likely to be covered by an IOM policy for Fiji, *ocean* would cover the sea where Fiji has sovereign rights. This includes the sea from the low-water mark to the full extent of the Exclusive Economic Zone (**EEZ**). In this area, a

⁴⁹ Establishing the Geospatial Information Accurately for Fiji's Maritime Boundaries, http://www.sopac.org/sopac/gisrconf/2014/Day2/Parallel_B/Session_3/01_MBP_presentations_MalaV_FLIS_GI_S_Conference27112014.pdf.

⁵⁰ Ibid.

nation has sovereign rights for exploring, exploiting, conserving and managing living and non-living resources of the water column and underlying continental shelf.⁵¹



Map: Fiji and Tuvalu area of overlapping EEZ for negotiation.⁵²

Pursuant to Fiji's Constitution, the authority and power to make laws for the State is vested in Parliament (s.46(1)). No person or body other than Parliament has authority to make any law in Fiji, except under authority conferred by the Constitution or by a written law (s.46(2)). Hence, the Government, through its administrative offices, has authority for lawmaking across the coastal and marine area. This arrangement differs from some countries where state/provincial government and/or local government has Constitutional or devolved authority for law-making in coastal areas. In relation to near shore fisheries management there are no devolved provincial or community-level law-making functions⁵³ and this arrangement applies in relation to managing the use of ocean resources more generally.

However, as stated by Sloan and Chand, 'Fiji's leadership has for many years been careful to preserve the country's unique heritage of traditional law, customary governance, and participatory decision-making amongst *iTaukei* communities, a governance system that appears to decentralise day-to-day resource management to local leaders and the communities they represent'.⁵⁴ In this regard, the *iTaukei Land Trust Act* and the *iTaukei Affairs Act* are relevant.

⁵¹ As noted above, it may also include the continental shelf beyond the EEZ for the purposes of exploring and exploiting the mineral and other non-living resources of the seabed and subsoil, together with sedentary organisms. Here a nation will have jurisdiction with regard to marine scientific research as well as other rights and responsibilities where the continental shelf beyond the EEZ has been determined by the *United Nations Commission on the Limits of the Continental Shelf*. United Nations, Oceans and Law of the Sea, Commission on the Limits of the Continental Shelf http://www.un.org/depts/los/clcs_new/commission_purpose.htm

⁵² Ibid.

⁵³ James Sloan and Kevin Chand, *A Review of Near Shore Fisheries Law and Governance in Fiji*, January 2015, iv.

⁵⁴ Sloan and Chand, above n 53, iv.

Hence, the management of Fiji's coastal resources, such as its near shore or coastal fisheries and coastal ecosystems, is actually guided by a 'dual' legal and governance system and the traditional *iTaukei* system for indigenous Fijians. This is a complex arrangement that, according to Sloan and Chand, is 'not always well or consistently understood by people and institutions in Fiji'.⁵⁵

The range of legislation potentially relevant to IOM

The *Environment Management Act 2005 (EMA)* would be relevant to an IOM policy. Its jurisdiction extends to the EEZ (s.3(1)). Its two key purposes are to:

- apply the principles of sustainable use and development of natural resources; and
- identify matters of national importance in relation to the environment.

It authorises the National Environment Council to appoint a committee for coastal zone management to prepare a coastal zone management plan (s. 8(3)). It does not currently authorise the NEC to make an IOM policy.

In so far as IOM policy includes coastal areas, legislation relevant to an IOM policy would include the following:⁵⁶

- *Bird and Game Protection Act 1923*
- *Crown Lands Act 1946*
- *Forest Decree 1992*
- *Land Conservation and Improvement Act 1953*
- *Litter (Amendment Decree) 2010*
- *Mining Act 1966*
- *National Trust for Fiji Act 1970*
- *Native Lands Act 1905*
- *Native Land Trust Act 1940*
- *Ports Authority of Fiji Regulations 1990*
- *Public Health Act 1936*
- *Rural Land Use Policy*
- *Water Supply Act 1955*

Other legislation relevant to the ocean area including the EEZ would include the following:

- *Biosecurity Promulgation 2008*
- *Endangered and Protected Species Act 2002*
- *Fiji Tourist Commission and Visitors Bureau Act 1970*
- *Fisheries Act 1942*
- *Fisheries Act Amendment Decree 1991*
- *Forest Decree 1992*
- *International Seabed Mineral Management Decree 2013*
- *Litter Decree 1991*
- *Local Government Act 1972*
- *Marine Act 1986*
- *Maritime Safety Authority Decree 2009*
- *Maritime Transport Decree 2013*

⁵⁵ Sloan and Chand, above n 53, provides an analysis of the dual system in so far as it applies to near shore fisheries.

⁵⁶ Patrina Dumar, *Integrated Coastal Management Framework of the Republic of Fiji 2011* (Department of Environment, 2011), 11.

- *Mining Amendment Decree 2010*
- *Natural Disaster Management Act 1998*
- *Offshore Fisheries Management Decree 2012*
- *Petroleum Exploration and Exploitation Act 1985*
- *Ports Authority of Fiji Act 1975*
- *Sea Ports Management Act 2005*
- *Ship Registration Decree 2013*
- *State Lands Act [Cap 132]1946*
- *Regulation of Surfing Areas Decree 2012*
- *Wrecks and Salvage Act 198*

At the time of writing, there were a number of draft laws which are likely to be relevant to a IOM policy, namely, Draft Inshore Fisheries Management Decree (the progress of which remains on hold) and an Aquaculture Bill,⁵⁷ which was tabled in the first sitting of parliament of 2016.⁵⁸

⁵⁷ Bill No. 9 of 2016.

⁵⁸ Fiji, *Government of Fiji Gazette*, No 9, 5 February 2016; see also *2016 Bills* (2016) Parliament of the Republic of Fiji <<http://www.parliament.gov.fj/Parliament-Business/Bills/2016-Bills>> (accessed 4 October 2016).

5. Policies relating to oceans management

The following is a brief summary of policy-making relating to the use of ocean resources which provides a status update on work that potentially relates to Fiji IOM policy. Only the most recent and directly relevant policy documents are covered. Therefore, Fiji's *Strategic Development Plan (2007-2011)*,⁵⁹ the *2007 National Biodiversity Strategy and Action Plan* and the *People's Charter for Change, Peace and Progress 2008* are not discussed. In addition, space has not permitted any discussion of sectoral policies such as:

- *National Climate Change Policy 2007*
- *Fiji Tourism Development Plan 2007-2006*⁶⁰
- *Tuna Management Plan 2002*⁶¹ and *Tuna Management and Development Plan 2014 – 2018*
- *Fiji Forest Policy 2007*
- *Mangrove Management Plan 1986*
- *National Plan of Action on Illegal Unreported and Unregulated Fishing (NPOA-IUU)*

As at 2014, the Ministry of Lands and Mineral Resources was formulating a long-term strategy for the mining sector. Also, in 2016 the Ministry of Fisheries commenced work to develop Fiji's National Fisheries Policy. This policy is being facilitated by a team comprising the Food and Agriculture Organisation of the United Nations (FAO), the Pacific Community (SPC) and Pacific Islands Forum Fisheries Agency.

Green Growth Framework for Fiji

In 2014, the Ministry of Strategic Planning, National Development and Statistics released the *Green Growth Framework for Fiji – Restoring the Balance in Development that is Sustainable for Our Future (Green Growth Framework)*. In the Foreword, the Prime Minister, Rear Admiral (Retired) Josaia Voreqe Bainimarama, refers to 'green growth in a blue world' and Fiji's 'very large marine environment compared with the relatively small total land of our islands'.

The Green Growth Framework was designed as a tool to accelerate 'integrated and inclusive sustainable development' and, hence, there are significant overlaps with the goals of a Fiji IOM policy. 'Integrated' is defined as a goal, that is, 'a holistic approach to support development that is sustainable and climate change-resilient'.⁶² One of the guiding principles is '[d]eveloping a new integrated approach, with all stakeholders collectively working together for the common good. The cross-cutting nature of issues relating to sustainable development requires harmony and synergy in the development strategies'.⁶³

The Green Growth Framework establishes eight Guiding Principles and packages the development agenda into ten Thematic Areas acknowledging the 'cross-cutting nature of many development issues'.⁶⁴ It was developed through an inclusive consultative approach, culminating in a National Summit in June 2014.⁶⁵ In relation to each thematic area, 'Key Challenges' and corresponding 'Proposed Way Forward, Actions and Indicators' are set out for the short-term (up to 2 years), medium-term (3 to 5 years) or long-term (over 5 years).

⁵⁹ http://www.planning.gov.fj/images/stories/Strategic_Development_Plan_2007-2011.pdf

⁶⁰ It promotes the development of ecotourism and suggests that Fiji formalizes the "National Park system for conservation lands and a Marine Park system for larger marine conservation areas", ICM Framework, 35.

⁶¹ <http://www.fiji.gov.fj/Media-Center/Press-Releases/Tuna-Management-Plan.aspx>

⁶² Green Growth Framework, above n 1, 12.

⁶³ Ibid, 17.

⁶⁴ Ibid, 6.

⁶⁵ Ibid, 7.

Hence, it can be seen that detailed policy work has been carried out with time-bound commitments that would overlap with an IOM policy.

The thematic areas are as follows:

Environment Pillar:

- i. Building Resilience to Climate Change and Disasters;
- ii. Waste Management;
- iii. Sustainable Island and Ocean Resources;

Social Pillar:

- iv. Inclusive Social Development;
- v. Food Security;
- vi. Freshwater Resources and Sanitation Management;

Economic Pillar:

- vii. Energy Security;
- viii. Sustainable Transportation;
- ix. Technology and Innovation; and
- x. Greening Tourism and Manufacturing Industries.

If viewed through the lens of IOM, each of these topics will have aspects that are relevant to managing Fiji's ocean area. An IOM policy in Fiji could decide to adopt the three pillar approach.

The most directly relevant thematic area is *Sustainable Island and Ocean Resources*. The key challenges for *Sustainable Island and Ocean Resources* have been stated as:

- i. The lack of leadership and networking for sustainable development.
- ii. Need to recognise the importance and potential of Fiji's vast marine ecosystem.
- iii. The need to develop a mechanism to access data on state of environment and natural resource use to facilitate proper decision making.
- iv. The need to establish a coordinated mechanism to manage the competing demand for Land.
- v. The need to strengthen enforcement of existing legislations that govern natural resource use and management.

It can be expected that this work would provide a starting point for preparing IOM policy content. The first challenge, 'Lack of leadership and networking for sustainable development' overlaps with the goals of an IOM policy and so it is helpful to consider the 'Proposed Way Forward, Action and Time bound Indicators':

Short Term (up to 2 years)

- Develop a natural resource management system which is inclusive and integrated.
- In partnership with community, NGOs, private sector and development partners, build upon existing community based integrated resource management initiatives and replicate in all provinces by end of 2016 (e.g. Yau Bula Conservation Initiative).
- Improve coordination of all resource management activities by legislating the coordinating function of the Divisional Commissioners' Offices by the end of 2015.
- Institutionalise biennial Natural Resource Summits by the end of 2015 to encourage information dissemination and build partnerships amongst stakeholders.
- Continue capacity building and awareness programmes with all communities, with emphasis on supporting resource owners, and on the importance of proper environmental stewardship.
- Immediately strengthen existing environmental education in schools system through more practical or hands-on learning.

Medium Term (3 to 5 years)

- Develop appropriate toolkits to promote ecosystem approach to development to guide practitioners at national, divisional, municipal and community levels in assessing new and existing development activities by the end of 2017.
- Develop a national invasive species plan by the end of 2017.
- Mainstream environmental auditing in investment approvals process.

In considering this list and other identified actions, a question arises as to whether these activities are actually 'Actions' or higher level policy goals. Also, the feasibility of the timeframes may need to be reconsidered.

Integrated Coastal Management Framework

The *Integrated Coastal Management Framework of the Republic of Fiji, 2011*⁶⁶ (**ICM Framework**) was prepared to review current coastal conditions, assess the legal and institutional governing framework, and recommend proposals for action and policy towards sustainable coastal resource management for Fiji. Its focus is on the coastal zone in Fiji, which is defined by the *Environment Management Act 2005* as "the area within 30 metres inland from the high water mark and includes areas from the high water mark up to the fringing reef or if there is no fringing reef within a reasonable distance from the high water mark" (s.2).

From a legal perspective, this definition has weaknesses in that whilst it may intend to include fringing reefs in the coastal zone it does not say 'up to and including' and the phrase 'reasonable distance' is indeterminate. It also needs to be noted that scientists generally divide coral reefs into four classes: fringing reefs, barrier reefs, atolls, and patch reefs;⁶⁷ it would appear that the definition of coastal zone in Fiji may not include reefs seaward of fringe reefs such as barrier reefs, atolls or patch reefs.

The ICM Framework makes six recommendations for future action summarised as follows:

Recommendation 1: Extend the jurisdiction of the ICM Plan inland within a clearly defined watershed when appropriate (instead of merely 30m).

Recommendation 2: Develop ICM plans at the provincial levels, which when considered together will suggest the make-up of the National ICM Plan. It is assumed that the ICM plans at the provincial level would include a mangrove management plan as well as a coastal sensitivity atlas for disaster response planning and management.

Recommendation 3: Determine a relevant legal and institutional framework to effectively support Fiji's ICM vision. Part of this includes determining which regulations under which Acts take precedence when in conflict.

Recommendation 4: To achieve multi-sectoral integration, a coastal commission (perhaps the NEC sub-committee) will need to play a greater role in decision-making. Its exact powers will need to be determined and formalised.

Recommendation 5: Key data and information requirements for sound coastal management decision-making be identified and an appropriate system of gathering, collation, use and management for ICM purposes be developed. These include knowledge of:

- coastal areas especially prone to erosion
- changes taking place in mangrove areas
- definition of special coastal areas which need consideration
- limits of acceptable change (LAC) in major current and planned tourism areas
- marine invasive species
- coral reef health
- wetland circulation, soil and vegetation types
- appropriate and effective pollution control measures for Fiji

⁶⁶ ICM Framework, 4-5.

⁶⁷ Coral Reef Alliance, <http://coral.org/coral-reefs-101/coral-reef-ecology/types-of-coral-reef-formations/>.

- coastal zone evacuation plans
- marine-based pollution from vessels and shipwrecks

Recommendation 6: Funding be sought under the next GEF funding cycle to support development of a full ICM Plan.

A *National Integrated Coastal Management Plan (ICM Plan)* is expected to result from the ICM Framework but has not yet been finalised.⁶⁸

These recommendations are mainly in the nature of management actions. The recommendation to determine a legal and institutional framework and achieve multi-sectoral integration overlaps with the goals of IOM policy. Whilst the ICM Framework considers extending the jurisdiction of the ICM Plan inland, it does not consider extending the jurisdiction in a seaward direction.

Implementation Framework for the National Biodiversity Strategy and Action Plan

The *2010-2014 Implementation Framework for the National Biodiversity Strategy and Action Plan 2007 (NBSAP Implementation Framework)* was prepared by the Department of the Environment with the support of a number of NGOs.⁶⁹

The framework has seven thematic areas:

1. Forest conversion management
2. Invasive alien species
3. Inshore fisheries
4. Coastal development (unsustainable tourism, port development, urbanization etc.)
5. Species conservation: threatened and endangered species (trade and domestic consumption)
6. Protected areas
7. Inland waters.

The first six of these thematic areas overlap with the concerns of IOM policy. In each thematic area, strategies are matched by measurable objectives, actions and identification of lead organisations.

In relation to *Inshore Fisheries (Marine Areas)* the strategies are as follows:

1. Promote sustainable aquaculture for restocking.
2. Promote biodiversity tourism.
3. Maintain existing protected areas.
4. Design new ecologically relevant inshore MPAs.
5. Strengthen natural resource leadership, management and governance.
6. Promote education and awareness in environmental science.
7. Improve communication between DoE & DoF on relevant biodiversity and food security issues.
8. Reform fisheries legislation and management institutions.
9. Reduce demand for marine natural resources and biodiversity products.

Each thematic area is supported by specific objectives and actions. For example, 'Reform fisheries legislation and management institutions' has the following:

Objective 8.1: by 2014, legally gazette 100% of all no-take areas nominated by communities depending on legislation changes on gazettal of no-take PAs.

⁶⁸ However note that Ra Province has implemented an Integrated Coastal Management Plan: <http://www.spc.int/wp-content/uploads/2016/12/Ra-ICM-CTI-ANZDEC-DOE-IAS.pdf>.

⁶⁹ Department of Environment, Fiji, *2010-2014 Implementation Framework for the National Biodiversity Strategy and Action Plan 2007*, <https://www.cbd.int/doc/world/fj/fj-nbsap-oth-en.pdf> [accessed August 30, 2016].

Objective 8.2: By 2014, size limit table will be updated with ecologically relevant minimum and maximum sizes for all target species

Objective 8.3: By 2014, all licensed commercial fishing boats provide catch information on inshore fisheries to DoF.

Many of these recommendations provide relevant considerations for any future IOM policy in Fiji, although they would need to be re-assessed as part of Fiji's larger objectives for an integrated approach to ocean management and spatial planning of all ocean areas.

6. Major issues and gaps related to an integrated approach

The following are some of the key issues and gaps that are apparent on an analysis of current policies and legislation relevant to a Fiji IOM policy.

Gaps in policy-making for marine areas

Policy-making for ocean resources management has primarily focused on the coastal zone. Presently, there is no policy, either relating to opportunities for economic development or sustainable use, that covers the expanse of Fiji's marine areas seaward of the coastal zone to the boundary of the EEZ. Hence, activities such as marine tourism, offshore oil and gas, commercial fishing, aquaculture, deep seabed mining, shipping, and alternative energy as well as biodiversity protection beyond the fringing reefs are not covered by an overarching Fiji government policy.

The Green Growth Framework starts to consider areas beyond the coastal zone when it states that:

[the degradation of the Pacific Ocean] especially the *marine space of Fiji's large exclusive economic zone* due to overfishing, pollution, climate change-induced damage to coral reefs and other factors are diminishing the productive capacity of the marine environment as a source of income, cultural identity and food security' (emphasis added).

It also says that 'poorly regulated mining activities and marine-based waste disposal further threaten natural capital'.⁷⁰ Only limited recommendations regarding Fiji's ocean area are found under the *Sustainable Island and Ocean Resources* thematic area. There is some mention of marine issues under the *Sustainable Transport* thematic area.⁷¹

Lack of focus on environmental protection within the marine environment

Where the marine environment is mentioned, such as in the NBSAP Implementation Framework, often actions are recommended alongside activities in the terrestrial and freshwater environment. A useful exercise may be to review the NBSAP Implementation Framework in order to identify and separate out all strategies and actions that solely concern the ocean environment. For example, in relation to the *Invasive Alien Species* Thematic Area, the action in relation to establishing a national invasive alien species database in Objective 1.2 is to 'undertake a comprehensive terrestrial, freshwater and marine invasive alien species survey of Fiji and Rotuma'. The lead organisation is to be the Ministry of Agriculture, Fisheries and Forests (MAFF).

Ongoing fragmentation in law and policy

Legislative and policy fragmentation has been identified in other reviews.⁷² This has led to a patchwork of regulation, with inconsistencies and overlaps that have been alluded to in policy documents such as the ICM Framework. Policy-making most clearly directed at the marine environment usually concerns inshore fisheries (such as in the NBSAP Implementation Framework) or biodiversity protection (coming under the mandate of the Department of the Environment). However, as the list of relevant legislation shows, there are a wide range of issues to be covered in the use of Fiji's marine resources. The thematic

⁷⁰ Green Growth Framework, above n 1, 12.

⁷¹ Ibid, 88.

⁷² For example see: Erika Techera and Shauna Troniak, *Marine Protected Areas Policy and Legislation Gap Analysis: Fiji Islands*, IUCN and WWF, 2009; Fiji Environmental Law Association and EDO NSW, above n 28; Fiji Environmental Law Association and EDO NSW, *Regulating Coastal Fisheries: Policy and Law Discussion Paper* (University of South Pacific Press, 2016).

areas set out in the Green Growth Framework go some way towards moving beyond a sectoral approach.

Lack of detail on approaches to achieve integration

The need for an integrated approach is emphasised in the Green Growth Framework but there is little exploration as to how a more integrated approach could be achieved. It refers to 'better coordination and linkages' 'across and within different agencies and sectors' and the need to 'fully integrate the three pillars of sustainable development'.⁷³ It is likely that the means to achieve integrated management will differ depending on whether the environment is terrestrial or marine.

Lack of elaboration regarding the ecosystem-based approach

The Green Growth Framework mentions the ecosystem-based approach in relation to the *Sustainable Island and Ocean Resources* thematic area.⁷⁴ It also mentions funding of US\$7.3 million from the Global Environment Facility, to implement a 3-year Ridge-to-Reef Project, 'which adopts an integrated ecosystem approach to sustainable resource utilisation and conservation practices extending from the upper river catchments to the ocean'.⁷⁵ One of the medium-term recommended actions is to 'Develop appropriate toolkits to promote ecosystem approach to development to guide practitioners at national, divisional, municipal and community levels in assessing new and existing development activities by end of 2017.' Whilst policy support has been given to use of an ecosystem-based approach, this has not been elaborated upon.

Less than systematic approach in identifying goals, priorities and actions

A question that arises in reviewing the list of actions in the Green Growth Framework is whether the timeframes are realistic and also whether some of these goals are 'Actions' or would be better presented as higher level policy goals leading to their own set of actions? Consideration could be given to whether some of these Actions would be better presented as nationally endorsed goals.

Failure to identify patterns in use of coastal resources that extend to marine areas more broadly

Some of the issues identified by the ICM Framework are equally relevant to the broader marine environment, such as:⁷⁶

- lack of a central body to coordinate development across relevant sectors or resource management planning;
- sectoral legislation is out of date and does not refer to the 2005 EMA or to ICM issues;
- lack of a department responsible for sustainable use of mangroves; and
- inconsistent legislation on pollution (*Public Health Act, EMA Waste, Disposal and Recycling Regulations* and the *Marine Pollution Regulation*).

⁷³ Green Growth Framework, above n 1, 23.

⁷⁴ Ibid, 43.

⁷⁵ Ibid, 45.

⁷⁶ ICM Framework, 21.

Coordination of institutional responsibility

It is notable that in the NBSAP Implementation Framework the 'lead organisations' indicated to carry out various actions will include more than one agency and each action will have its own combination of organisations. This raises questions about how these often complex activities are to be coordinated. For example, in relation to Inshore Fisheries:⁷⁷

- Filling in biodiversity gaps for data deficient taxa (4.2a) is the responsibility of USP, NGOs, DoF, PAC, SMC
- Completing marine ecological gap analysis for inshore areas to prioritize habitats and species for protection (4.3a) is the responsibility of PAC, FLMMA, NGOs;
- Using spatial modelling tools to identify optimum areas for a representative, resilient network of inshore MPAs (4.4a) is the responsibility of PAC, FLMMA, DoE, NGOs.

Institutional arrangements

Related to the above point, it can be noted that the ICM Framework envisions new legislation to support ICM and recommends that there be a relevant legal and institutional framework to effectively support Fiji's ICM vision (Recommendation 3). It also recommends there be a coastal commission to play a greater role in decision-making (Recommendation 4). These recommendations indicate an institutional gap not just in relation to coastal management but also the wider ocean area. In addition, in the context of MPAs and protected areas, there appears to be a strong case for establishing an independent agency charged with the responsibility of establishing and maintaining protected areas.⁷⁸ This would at least, ensure that transparent, participatory and consultative processes are followed that take into account pre-existing traditional use rights and commercial rights before MPAs are designated.

Lack of zoning in coastal zones seaward from the high water mark

In coastal zones seaward from the high water mark, according to the ICM Framework, there are currently no legally recognised zoning plans except for the Ono Marine Protected Area in Kadavu. The Fiji ICM Plan 'is expected to develop policies and standards that will establish conditions or restrictions on various parts of the coastal zone, as well as facilitate development in other parts.'⁷⁹

Marine Protected Areas

Notably, MPAs that have been established lack a legislative basis or a legislated management regime. International experience indicates that dedicated and comprehensive legislation is required to ensure that a network of representative MPAs is appropriately sited and managed on an ecosystem-basis using an integrated approach.⁸⁰ In 2005, the government of Fiji committed to protecting at least 30% of Fiji's marine areas using 'comprehensive, ecologically representative networks of MPAs [marine protected areas], which are effectively managed and financed'.⁸¹ However, Fiji's existing MPA mechanisms appear to be inadequate for achieving this goal and there is a strong case for Fiji to develop

⁷⁷ NABSAP Implementation Framework, 28.

⁷⁸ Fiji Environmental Law Association and EDO NSW, above n 27, 48-49.

⁷⁹ Ibid.

⁸⁰ Techera and Troniak, above n 72.

⁸¹ Speech by the Minister of Foreign Affairs & External Trade and Head of the Delegation to the Review of the BPOA +10, the Honourable Minister Kaliopate Tavola, cited in Cristelle Prate and High Govan, *Our Sea of Islands Our Livelihoods Our Oceania, Framework for a Pacific Oceanscape: a Catalyst for implementation of Ocean Policy* (SPREP, 2010).

a comprehensive legal framework for MPAs.⁸² As already noted, this framework must find a way to create MPAs through a participatory and consultative process that ensures pre-existing use rights are recognised and taken into account. In Fiji's context, this includes commercial interests and the use rights ascribed to traditional and artisanal fishers which are to some extent recognised in law but are also rooted in Fiji's customs and traditions.

⁸² See Fiji Environmental Law Association and EDO NSW *Towards an Effective Legal Framework for Marine Protected Areas in Fiji: Policy and Law Discussion Paper* (The University of South Pacific Press, 2017).

7. Benefits of a Fiji IOM policy

The key potential benefits of a Fiji IOM policy are outlined below.

Leadership, networking and focusing on the wider marine environment

The first key challenge identified by the *Sustainable Island and Ocean Resources* Thematic Working Group in the Green Growth Framework was ‘lack of leadership and networking for sustainable development’ and the second was the ‘need to recognise the importance and potential of Fiji’s vast marine ecosystem’.

The preparation of a Fiji IOM policy itself is a key and significant step as it would require that Fiji must decide the overriding principles that it wants to apply to the use of its ocean spaces. This process could generate the required leadership as, after channelling the best inputs from stakeholders around the country, it would be endorsed at the highest level of government. If it receives cross-party support, it will serve to ensure that this leadership continues. The process of policy-making will foster networking between all relevant stakeholders. Furthermore, it will highlight the significance of Fiji’s marine areas including the EEZ for its future development and link sustainable use to Fiji’s overall development aims.

A democratic approach to improving oceans governance

The process of formulating a Fiji IOM policy through a participatory and consultative procedure with the full range of stakeholders would provide an important opportunity to demonstrate participatory democracy in action.

Due to the need to integrate all levels of government, there would be consultation at the national, provincial, local and village levels. This provides an opportunity to all levels and sectors to have a say in the future management of Fiji’s ocean resources.

To adapt this process to the Fiji context it may be sensible to use these consultations to decide the overriding principles that Fiji wants to apply to the use of its ocean spaces.

An IOM policy would be a departure from the current sectoral approach that has tended to focus primarily on fisheries and biodiversity conservation. It could expand the knowledge and understanding of the ecosystems within Fiji’s marine areas, opportunities for economic development, and measures for sustainable use. Analysis leading up to an IOM policy would provide an opportunity to prepare a critical assessment of existing arrangements. If made publicly available as part of the consultation process, it would provide an opportunity for public education and awareness raising.

The consultative process that is intrinsic to formulating of an IOM policy would provide Fiji with the opportunity to build cohesion by engendering common viewpoints on the way forward to improve oceans management, identify agreed national priorities and gain public commitment by Government regarding allocation of resources. This is likely to generate higher levels of participation in the management of ocean resources in the future than would result from a less inclusive process.

A principled approach to improving oceans governance

IOM policy-making provides an opportunity for the Fiji Government to develop a principled approach in responding to the long-term scenario for sustainable use of the ocean resources, particularly in relation to issues such as climate change, food security, economic development and environmental protection. The applicability of best practice concepts that are emerging internationally would be canvassed but with the aim of ensuring that these are

for guidance only and it is for Fiji to ensure that its IOM policy is suited and appropriate to the Fiji context.

Once an appropriate and robust IOM policy is developed it can be used to guide the development of relevant legislation (for example, fisheries, MPA or coastal management legislation) using a principled analytical approach such as that outlined in FELA's publication, "Regulating Coastal Fisheries: Policy and Law Discussion Paper". This framework views environmental laws as comprising 5 elements: goals, objects, principles, tools and mechanisms, and governance and institutions.⁸³

A system-oriented approach

Achieving integration will require that attention is given to the role and function of each of the relevant sectors and levels of government as well as coastal communities. In this way, developing a Fiji IOM policy could better delineate government responsibilities across relevant sectors and levels of government. It could also clarify the traditional pre-existing rights held by, and the role to be played by, the iTaukei communities in marine resources management and measures to take into account traditional use rights. If well-designed and implemented, a Fiji IOM policy has the potential to achieve more efficient coordination of decision making in relation to resource use which will overcome duplication and streamline government activity leading to cost savings.

Practical benefits

As Fiji is party to a number of international conventions, treaties and agreements concerning ocean resources, a Fiji IOM policy will serve as a road map to the international community explaining how Fiji intends to meet its international obligations. The existence of an IOM policy with a long-term focus will also foster legal certainty, which is attractive for both domestic and international investors. A Fiji IOM policy which sets out firm government commitment is likely to engender confidence in the international donor community and encourage financial and other assistance while ensuring that the assistance is directed to areas where the benefits to Fiji can be maximised.

⁸³ This framework is based on the analytical framework recently developed by the Australian Panel of Experts in Environmental Law (APEEL) in the paper APEEL, *The Foundations for Environmental Law: Goals, Objects, Principles and Norms – Technical Paper 1* (APEEL, 2017).

8. Risks and costs in embarking on IOM policy-making in Fiji

RISKS

The main risks relate to inability to complete an effective IOM policy or failure to implement the policy. Such risks mean that there needs to be strong political will to make the policy-making process a success and bring the aspirations and goals of the policy to fruition.

To mitigate this risk, it is essential that Fiji embarks on an IOM policy that is suited to the Fiji context and this means recognising practical issues including the most important of limited resources. While lessons learned from other jurisdictions and international best practice provide important guidance, Fiji must create an IOM policy that suits its context and anticipates the implementation challenges. The design of the process to get to a Fiji IOM policy is crucial, as it could start with the overriding principles that it wants to apply to the use of its ocean spaces, and then formulate more detailed policies in time and in accordance with these principles.

Other risks are identified below:

IOM policy remains 'just another policy document'

There is a risk that an IOM policy fails to generate sufficient interest for effective implementation across government. Avoiding poor implementation will require leadership and political will. Strategies that could be employed to assist implementation could include a stakeholder engagement and partnership plan.

It is important to recognise that Fiji government does not lack the capacity or will to make good decisions, but it does lack resources, and it is frequently bombarded with agendas and best practice models. This can lead to the creation of lots of ill-suited policy documents championed by various NGOs or foreign interests with the best intentions but the longer a policy document is the less likely it will be read.

To avoid the Fiji IOM policy process contributing to issues related to “donor fatigue” or being wrongly seen to be external to the government, every effort should be made to:

- ensure the team includes key government personnel to drive the IOM policy, as well as appropriate external experts; and
- keep the document concise and well structured.

Consultation is not sufficiently inclusive

To achieve the potential benefits mentioned above, experience in other countries has shown the vital importance of widespread consultation in the process of preparing the policy. Indeed, without involvement of all stakeholders and levels of government administration, the policy is unlikely to adequately identify measures to achieve integration or achieve the support necessary for implementation. Therefore, obstacles or inability to conduct widespread consultation and achieve the buy-in of key stakeholders present an underlying risk.

Again, to take into account the Fiji specific issues, the consultation should focus on the overriding principles that Fiji wants to apply to the use of its ocean spaces.

The IOM policy-making process is not completed

Due to the number of stakeholders and their geographic spread, the logistics of the consultation process will need to be well-organised and resourced. The team responsible for

driving IOM policy development will need clarity of intent and purpose, in particular, a clear terms of reference. This will also be assisted by a focused approach to the IOM policy itself and a commitment to keeping the policy concise.

The goals of IOM policy-making are not understood by stakeholders

There is a risk that the purpose behind IOM policy-making will not easily be grasped by all relevant sectors. The concepts and best practices may not resonate with stakeholders in Fiji. If so, those driving the process will need to be fully conversant with the rationale behind IOM and facilitate consultations in an educative and communicative manner. This again suggests that a focused approach to the IOM policy would assist.

Attention is distracted away from implementing current programs

Current policy-making shows the extent of thought that has gone into how best to approach issues in managing the use of Fiji's coastal and marine resources. Many useful programs and actions have been recommended. Embarking on production of an IOM policy could take valuable resources away from these activities. Whether this is so will depend on how streamlined the consultation process is. On the other hand, the existence of so many programs may help to ensure active participation in the consultation process by a wide range of stakeholders. In addition, if the IOM process document is short and well considered it may be that current programs would identify ways to ensure that they could fit within the IOM policy or at least transition towards compliance with it, once it is adopted.

Consensus between stakeholders is not achieved

There is a risk that consensus between stakeholders will not be achieved regarding some aspects of the policy. Even if it is achieved at a high level of generality, consensus may fall apart when it comes to implementation. Much will depend on the skill of those carrying out the consultation.

A particularly controversial policy area may concern zoning which prohibits use altogether in the interest of conservation or fisheries management. This difficulty is hard to resolve as it arises from diametrically opposed interests in use of marine resources (e.g. commercial fishing interests versus conservation). However, consensus building at the level of agreed principles and proposed tools and mechanisms is likely to pave the way for smoother implementation of such policy.

This risk may be mitigated by agreeing to a staged approach to the creation of the IOM policy by agreeing on the overriding principles that Fiji wants to apply to the use of its ocean spaces, and then determining the details of the policies like zoning as part of a further process. This may also take into account the resourcing constraints that Fiji faces, and the importance of keeping the processes locally driven.

Difficulties arise in completing written content

If the goals and purpose behind an IOM policy are not fully understood by those driving the process, there is a possibility that the final document will not be completed or not effectively expressed. The document itself needs to be well-written and reflect the consensus of opinion. The process of actually writing the IOM policy document may bring up road blocks which need to be resolved. Again this risk may be mitigated through a staged approach that determines clear overriding objectives and the identification of a team of people who will be present through the process.

New zoning approaches are seen as unrealistic

Implementation failure is a possibility in relation to zoning in coastal areas and MSP. As pointed out in the ICM Framework, the coastal zoning would have to be linked to the national land use planning process given the importance of sustainable watershed management to the health of coastal ecosystems.⁸⁴ Fiji is still struggling with land use planning and establishing a systematic approach to zoning. The goals of MSP may seem too remote in relation to other government priorities.

Again, a staged approach to the creation of the Fiji policy will also assist here because the overriding principles and the process to a Fiji IOM policy may serve to plant the seed of new approaches and set out clearly what still needs to be decided through further participatory decision making processes. Fiji is not likely to have the resources required to undertake MSP in one move but may be able to build towards it over time via a thorough and considered process.

Lack of funding for government commitments

There is a risk that aspirations set out in a Fiji IOM policy will not be achieved due to lack of funding. For example, funds may not be available to support a new institution or capacity building. However, finding the appropriate process and effective consultation across the community is likely to avoid unrealistic expectations in this regard and also help in identifying options to raise funds as long as financial issues are raised upfront. Further, innovative funding mechanisms could be considered, including ways to promote private sector contribution.

Lack of agreement between levels of government

There is a risk that whilst policy aspirations are fully endorsed by one government level, they are not taken up at another. This risk highlights the need for thorough consultation processes in formulating policy content suitable for Fiji's system of government and society.

COSTS

The costs of embarking on an IOM need to be evaluated in light of the risks mentioned above. Costs of a Fiji IOM policy will arise in the process of preparing the policy and later in the implementation of policy commitments. Both direct and indirect costs are likely to arise in implementation. Some readily anticipated costs are listed below:

Cost of policy preparation

Preliminary preparations

The process of policy formulation will need to be driven or 'championed' by a government agency who will need to be fully apprised of the rationale for embarking on the process and potential policy content. This may require upfront training for facilitators. It will also require resources to be allocated to the preparation of the Discussion Paper and Issues Paper mentioned below.

Public consultation

It is a fundamental part of IOM policy-making that it involve widespread consultation across all sectors and levels of government related to the use of ocean resources. Consultation will

⁸⁴ Ibid 20.

also need to involve local communities, Indigenous groups and civil society organisations. Such consultations are likely to be time consuming and require allocation of considerable financial resources.

Preparation of the draft and final IOM policy

The writing up of the draft and final policy will require well-developed writing skills to encapsulate any new approaches and the consensus achieved in consultations. There will also be publishing costs.

Costs of policy implementation

Direct economic costs to the Government

There may be direct economic costs to the Government arising from adoption of new approaches to oceans management. For example, the establishment of a new government agency or allocation of additional tasks to an existing agency or department will incur costs, as will any related training programs. Embarking on new processes such as MSP or the formalization of the establishment of MPAs will necessarily involve costs to the Government. Ensuring that the IOM process and policy is suited to the Fiji context will be essential in determining where cost savings can be made.

Indirect short-term costs

There may be short-term costs to society as a whole from new regulatory measures. For example, restrictions on commercial use of resources could lead to lost employment opportunities and sources of revenue for the Government. Restrictions on activities such as near shore or coastal fishing may impact the livelihood of communities that rely on such resources for their daily needs or as sources of income. Hence, these measures will need to be introduced after consultation with affected parties with the goal of minimising negative impacts and stressing long-term sustainability goals.

9. IOM policy case studies

In assessing the benefits, risks and costs, of an IOM policy, it is useful to draw on the experience of other countries. This is provided for guidance purposes only, as what is appropriate to Fiji is not necessarily appropriate elsewhere and vice-versa.

Accordingly, this section provides an overview and the lessons learned from 3 countries: Australia, Canada and the United Kingdom (UK).

In setting out these lessons here, it is instructive to note that despite the 3 countries being developed economies the creation of their IOM policies has not been entirely successful and there are criticisms of the approaches taken.

In designing the Fiji IOM policy it is important to recognise that the range of potential tools that can apply to IOM policy, and the range of competing uses and demands on Fiji's marine areas can quickly become overwhelming. Lessons could also be learned from the approaches of other Pacific Islands including Palau, Samoa and Vanuatu, and these lessons should be explored further in the next steps.

For Fiji, it will be important to err on the side of creating a practical approach to its IOM policy to ensure what emerges is suited to context.

OVERVIEW OF CASE STUDIES

In 1997, Canada was the first country to adopt an Oceans Act. In 1998, Australia was the first country to adopt an Oceans Policy. The United Kingdom, although slow to begin the integrated oceans management journey, by 2009 had adopted the *Marine and Coastal Access Act 2009* which is a comprehensive attempt to introduce marine regional planning. This review focuses on the following:

- the process of policy formulation;
- policy content (key attributes, related legislation and institutional arrangements); and
- progress with implementation.

Whilst it may be initially thought that these countries have very different concerns from Fiji regarding ocean management, a list of issues in each country shows otherwise.⁸⁵

	Australia	Canada	United Kingdom
Issues/Drivers	Expanding use of ocean resources - fisheries, oil and gas	Managing impact of expanding industries – aquaculture, oil and gas	Loss of marine biodiversity
	Conflict between users	Decline of wild fish stocks	Need for responsible and sustainable fisheries
	Wealth generation – marine industries aquaculture, tourism	Protecting the seas as tourist attraction	Protecting environment from oil and gas industry

⁸⁵ As stated in each country's policy document.

	Security for marine-based industries and access to resources	'Boom and bust' cycles that have depleted valuable resources	Pollution from land-based sources and dumping at sea
	Ecological sustainability – marine species protection		Facing up to the impact of climate change

A comparison of the process of formulating ocean policies is provided below:

Date	Australia	Canada	United Kingdom
1987		Announced development of an Oceans Strategy	
1995	Started 'integrated ocean strategy'		
1997		Oceans Act 1997 commenced on 31 January 1997	
1998	Australia's Oceans Policy released		
			Review of marine conservation conducted
2002		National Oceans Management Strategy released	Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment
2009			Marine and Coastal Access Act 2009 commenced
2011	Renewed calls for Oceans Act	Dissatisfaction with implementation	

In each country progress has been made but weaknesses remain; IOM policy is a 'work in progress'. The case studies identify promising approaches as well as sources of weakness in implementation. From an analysis of the case studies, useful criteria to assess the quality of an IOM policy include the following:

- Adoption of internationally accepted principles
- Coverage of both the coastal and marine environment
- Presentation of short, medium and long-term goals
- Intention to cover all relevant sectors
- Reference to the full range of threats to the coastal and marine environment
- Consideration of the roles and functions of each level of government
- Expression of the roles and functions of the community
- Recognition of Indigenous rights and responsibilities

- Clarity about what is to be done – who is to do what, when and how
- Mention of financial implications of proposed actions
- Timeframes for implementation.

An overview of ocean policies adopted in Australia, Canada and the United Kingdom is contained in **Appendix A, Appendix B, and Appendix C**, respectively.

LESSONS LEARNED

Observations and lessons learned from the case studies include the following:

Policy formulation process

- Support for embarking on IOM policy-making from the highest levels of government will be crucial. It will also need to achieve bipartisan support given that implementation will most likely occur when another political party is in government. There was bipartisan support from consecutive Prime Ministers (Aus), endorsement by the political party in government (UK), and by parliament (Canada).
- It will be necessary to designate an agency to drive policy-making activity (Aus, Can, UK). Establishment of a coordinating body will also assist (Aus).
- The choice of a designated agency needs to be carefully considered as it may influence how the policy is received; the perception that it has a particular interest or sectoral bias should be avoided (Aus).
- A logical flow to consultation papers is necessary (Aus, UK, Can), for example, a Discussion Paper; an Issues Paper; a draft IOM policy; and the final IOM policy (Aus, UK).
- Key management principles should be established early on (Aus, Can, UK), as should proposed government actions (Aus, UK).
- All levels of government should be involved from early on in the policy-making process (Aus).
- Financial issues are likely to arise between levels of government and need to be addressed early on (Aus, Can).
- Involvement of national and international NGOs can help secure community support and provide policy inputs (Aus, UK).
- Strong involvement of local NGOs will lead to public support (UK).

Policy content

- Core concepts and principles should be consistent with internationally accepted principles (Aus, Can, UK).
- Commitments need to be clearly expressed (Aus, Can, UK).
- A commitment should be made to development *alongside* protection of the environment (Aus, Can, UK); a strategy regarding marine industry development can be prepared separately (Aus, UK).
- The interrelationship between large ocean management and coastal management (Aus, Can, UK) should be recognised.
- Core commitments should include EBM within identified marine areas (Aus, Can, UK), the mechanics of which should be explained in the document itself (Aus, UK).
- A statement of commitment to MSP reform legislation together with a timeframe for implementation may be effective as a starting point for the introduction of MSP (UK).
- Goals regarding the establishment and extension of a network of MPAs should be set out (Can, Aus, UK).

- A management-based approach rather than one supported by legislation may ultimately hinder implementation (Aus, Can).
- Commitment to development of operational tools and guidelines is needed (Can).
- The need to enhance ocean science and technology should be acknowledged (Aus, Can).
- Policy commitments should include financial estimates (Aus, Can).

Implementation

- New institutions will need to be established through legislation to ensure longevity (Aus).
- A cooperative approach to planning without a legislative basis is not likely to be effective (Can) and eventually may be abandoned (Aus).
- Stakeholders not included in IOM policy-making will be unlikely to assist in implementation, particularly provincial or local government (Aus).
- Uncertainty in expectations will lead to delay in implementation (Aus).
- A location-based approach to identifying relevant stakeholders will help generate active local participation (Can).
- On-going financial commitment will be required to achieve medium and long-term goals (Aus, Can).

10. Recommendations for a way forward to achieve greater integration

At the time of writing, Fiji has commenced the process of developing Fiji's National Ocean Policy Framework (the **Ocean Framework**). The information in this Scoping Paper has been provided to the parties involved in developing the Ocean Framework and is directly relevant to that process. Stakeholders appear hopeful that the Ocean Framework will provide a strong foundation for moving forward with an integrated approach to oceans policy in Fiji. The Ocean Framework may be the first step in the development of an extensive Fiji integrated oceans management (**IOM**) policy for Fiji.

The analysis undertaken in this paper indicates that a Fiji IOM policy could have an essential role to play in Fiji as it could facilitate a more wide-ranging, systematic and integrated approach to oceans management.

Preparation of an IOM policy presents an opportunity to generate leadership and networking between all stakeholders. It also potentially enables a principled and democratic approach to improving management of Fiji's ocean area.

A Fiji IOM policy could be developed in parallel with implementation of Integrated Coastal Management policy and other relevant policies in Fiji. In doing so, it could provide guidance for the gradual extension of the geographic scope of ICM policy but care would be needed so as not to detract from implementation of an ICM policy or other important policy initiatives taking place in Fiji.

If Fiji were to embark on the path of preparing an extensive IOM policy, possible steps in this process might include:

- development of a discussion paper which would: set out what a suitable IOM policy and process could look like for Fiji, borrowing on examples from the Pacific and analysing the policy and law framework relevant to a Fiji IOM policy; discuss key concepts and issues for developing an IOM policy; and, identify appropriate content and structure for Fiji's IOM policy;
- formation of a ministerial advisory group that would drive the policy development process; and
- appropriate consultations with all relevant stakeholders on the preparation of IOM policy papers, relevant terms of references, and the content of an IOM policy.

APPENDIX A
CASE STUDY 1
LESSONS LEARNED FROM AUSTRALIA'S OCEANS POLICY

INTRODUCTION

The case study on integrated oceans management policy in Australia will provide an overview of oceans policy: key policy attributes in the context of enabling legislation; decision-making/planning structures; agencies and responsibilities; and rights and responsibility within arrangements for fisheries, mining (off shore oil and gas) and protected areas.

In doing so, the case study will focus on the following:

- a. the process of policy formulation,
- b. policy content, and
- c. progress with implementation.

Australian policy on integrated oceans management is a 'work in progress'. Progress has been made, but weaknesses remain.

This case study aims to briefly review the experience in Australia to identify the most promising approaches to delivering desired results in oceans management, as well as weaknesses. Lessons gleaned from the process of policy formulation, policy content and implementation will be highlighted.

Governance structure of marine areas in Australia

The governance structure for marine management in each country has a bearing on cross-jurisdictional integration issues in devising a national oceans management policy.

Ocean management in Australia is governed under a federal system. The Commonwealth's power to legislate on marine affairs is primarily derived from the Australian Constitution's federal powers in relation to external affairs and fisheries.

However, the *1979 Offshore Constitutional Settlement (OCS)*,¹ negotiated between the Commonwealth and States and Territories implemented a particular system of cooperative federalism which has been described as a 'complex web' of Commonwealth, State and Territorial Control, ownership and title.² The resulting *Coastal Waters (State Powers) Act 1980 (Cth)* (the **State Powers Act**) gives to the States title and legislative responsibility over all activities within 3 nautical miles (nm) from the territorial sea baseline (the '**coastal waters**'), and gave additional legislative authority for specified activities beyond 3 nm regarding fisheries, shipping facilities and works, and some subterranean mining.

The States and Northern Territory are also responsible for land-use decisions along the coast and all land-based activities that may impact on coastal or marine areas.

The Commonwealth has legislative responsibility for:

- the "adjacent area" in relation to matters other than mining, harbours, other shipping facilities and certain fisheries³;
- areas beyond the "adjacent area"⁴ to the seaward boundary of the Territorial Sea; and
- an exclusive economic zone (**EEZ**) that extends from the outer limit of the territorial sea

¹ The negotiations arose from the High Court decision in *New South Wales v Commonwealth* (1975) 135 CLR 337, which amongst other things cast serious doubt on the validity of State legislation that purported to operate within the territorial seas. For a further history of Australia's offshore jurisdiction see W Gullett and G Rose, 'Australia's Marine Jurisdictions under International and Domestic Law' in W Gullett, C Schofield and J Vince (eds) *Marine Resources Management*, (LexisNexis Butterworths, 2011) 25—39.

² Rachel Baird, 'The National Legal Framework' in R Baird and D R Rothwell (eds) *Australian Coastal and Marine Law* (Federation Press, 2011), 45.

³ State Powers Act s 5(c).

⁴ Constitution s 51 (xxix); *New South Wales v Commonwealth* (1975) 135 CLR 337 (*Seas and Submerged Lands Case*).

for 200 nm, except in certain circumstances where it has been pulled back because of actual or potential maritime delimitations with other countries. The EEZ includes the seabed, continental shelf and the airspace above those waters.

In addition, Australia has sovereign rights over the continental shelf beyond the EEZ for the purposes of exploring and exploiting the mineral and other non-living resources of the seabed and subsoil, together with sedentary organisms. In this area, Australia has jurisdiction with regard to marine scientific research as well as other rights and responsibilities. The extent of continental shelf beyond the EEZ that can be claimed by Australia is determined by the *United Nations Commission on the Limits of the Continental Shelf*.

In relation to fisheries, provision has been made for cooperative fisheries management. This may take the form of a joint authority via an arrangement between the Commonwealth and one State or, if required, the Commonwealth and two or more States. Alternatively, the Commonwealth and States may agree on arrangements for particular fisheries.⁵

Summary

The 1998 *Australia's Oceans Policy* (the **Oceans Policy**)⁶ aimed to establish a framework for integrated and ecosystem-based planning and management that addressed both economic and environmental concerns. It recognized that separate sectoral based management was not sustainable in the long run. It committed to a system of cross-jurisdictional and cross-sectoral regional marine planning known as the Regional Marine Planning (RMP) process. RMPs were to span state/territory and Commonwealth jurisdictions based on large marine ecosystems and were to integrate sectoral commercial interests and conservation requirements.

The Oceans Policy, however, was a policy-based initiative that lacked a legislative foundation. Coordination of implementation with the States and Northern Territory faltered and the Commonwealth ultimately retreated from the goal of integrated and ecosystem-based planning and management. Instead, it chose to rely on the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) to implement two other approaches to ocean management:

- bioregional planning, and
- assessment and approval processes for actions in a legislatively defined Commonwealth marine area or the Great Barrier Reef Marine Park that have or are likely to have a significant impact on the environment.

The Commonwealth's retreat from a goal of establishing an integrated multi-sectoral, ecosystem-based management of marine areas, instead of relying on marine bioregional planning can be criticised as an almost singular sectoral approach, being overly associated with the 'the environment sector'. It is also criticised as only covering waters within the Commonwealth's jurisdiction.

1. PROCESS OF POLICY FORMULATION

Political leadership

The policy process was initiated in December 1995 when then Prime Minister Paul Keating of the Labor Party announced an agreement to develop an integrated oceans strategy to address management of Australia's marine resources.⁷ Development of that strategy continued even after a change of government with Prime Minister John Howard announcing the government's intention to develop an Oceans Policy on 3 March 1997. *The Oceans Policy* was released on 23 December 1998, a week before the conclusion of the United Nations 1998 Year of the Ocean. In a 'Message from the Prime Minister' at the beginning of the *Oceans Policy*, then Prime Minister Howard claimed

⁵ Rachel Baird, 'Fisheries Management', in R Baird and D R Rothwell (eds) *Australian Coastal and Marine Law* (Federation Press, 2011), 122-150, 128-131.

⁶ Commonwealth of Australia, *Australia's Oceans Policy* (Environment Australia, 1998).
<<http://www.environment.gov.au/about-us/publications/archive>>.

⁷ Parliament of Australia, International Year of the Oceans -1998, Australia's Policies, Programs and Legislation http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp9899/99R_P06; Marcus Haward and Joanna Vince, *Oceans Governance in the Twenty-first Century – Managing the Blue Planet* (Edward Elgar, 2008).

that the policy demonstrates world leadership by implementing a coherent, strategic planning and management framework for dealing with complex issues confronting the long term future of our oceans”⁸.

Lesson: Bipartisan leadership is important when the policy is proposed. This makes more likely a successful release of any policy document, even if government changes prior to that time.

Institutional leadership

The Federal Minister for the Environment had carriage of the policy development process and Environment Australia (EA) became the pivotal agency in the policy development process.

Lesson: Selection of a lead agency in policy development may inform perception of the policy priorities. Selection of EA helped create a perception that environmental concerns were given highest priority. If the Ministry for Fisheries and Forest were the lead agency, however, it may have led to a perception that resource use was given higher priority over conservation.

Founding principles established upfront

When the Australian government announced their intention to prepare a National Oceans Policy, it stated that the policy would be grounded in two key principles - ecologically sustainable development and multiple-use management.

Lesson: Establishment of founding principles before the commencement of policy formulation can be an effective way of focusing the overall goal of a new strategic policy.

Consultation process

The initial announcement was quickly followed by a ‘consultation document’ called *New Horizons*, which set out many of the issues expected to be included in the policy. The main vehicle for consultation activities became an 18 member Ministerial Advisory Group (MAG) established in September 1997. It included representatives of key sectoral interest groups, academics and research institutions, Aboriginal and Torres Strait Islanders, the Australian Marine Conservation Society and two members from EA. The MAG reported to the Minister and issued its report, *Report of the Ministerial Advisory Group on Oceans Policy*, in March 1998.

The MAG, however, did not include representatives from the States or Northern Territory.⁹ Indeed, it was designed to exclude State government stakeholders. The terms of reference for MAGOP were to advise the Commonwealth on ‘the views of a broad range of relevant non-government stakeholders on development of the Oceans Policy.’¹⁰

The following seven issues papers were produced by as part of the consultation process (**Issues Papers**):

- 1) *Oceans Planning & Management: multiple use management in Australian Marine Environment - Principles, Definitions and Elements*¹¹
- 2) *Oceans Planning & Management: Management Instruments for Marine Allocation and Use*¹²
- 3) *Oceans Planning & Management: Best Practice Mechanisms for Marine Use Planning*¹³
- 4) *Socio-cultural Considerations: Caring for the Commons – Socio-cultural Considerations in Oceans Policy Development and Implementation*¹⁴

⁸ Commonwealth of Australia, Australia’s Oceans Policy (Environment Australia, 1998).

<http://www.environment.gov.au/about-us/publications/archive>, p1.

⁹ Environment Australia, *Report of the Ministerial Advisory Group on Oceans Policy* (Environment Australia, March 1998) i.

¹⁰ Ibid ii.

¹¹ Keith Sainsbury et al, *Oceans Planning & Management Issues Paper 1: multiple use management in Australian Marine Environment - Principles, Definitions and Elements*, (Environment Australia, June 1997).

¹² R Greiner et al, *Oceans Planning & Management Issues Paper 2: Management Instruments for Marine Allocation and Use* (Commonwealth Department of Primary Industries and Energy, September 1997).

¹³ David Pitts, *Oceans Planning & Management Issues Paper 3: Best Practice Mechanisms for Marine Use Planning*, (Commonwealth Department of Primary Industries and Energy, September 1997).

¹⁴ Valerie A. Brown and Melinda Spink, *Socio-cultural Considerations Issues Paper 4: Caring for the Commons – Socio-cultural Considerations in Oceans Policy Development and Implementation*, (Environment Australia, October 1997).

- 5) *Socio-cultural Considerations: Expanding the Role of Collaborative Management and Stewardship in the Conservation Management of Australia's Marine and Coastal Resources*¹⁵
- 6) *Socio-cultural Considerations: Socio-cultural – Saltwater Country, Aboriginal and Torres Strait Islander Interest in Ocean Policy Development and Implementation*¹⁶
- 7) *Biodiversity Conservation*¹⁷

The *Oceans Policy* made the point that it did not present a formal position or outcomes agreed to by the Commonwealth, State or Territory governments, or the Australian Local Government Association.¹⁸ This point was reiterated in Issue Paper 1.¹⁹ While state/territory bureaucracies participated in workshops and fora before and after the establishment of the MAG, it can nevertheless be seen that the state/territory and local governments were not fully included in the policy making process.

This was a serious weakness in the *Oceans Policy*. At the time, the States and Northern Territory expressed concern regarding any new institutional arrangements as well as financial commitments and obligations that might arise from the policy.²⁰

Lesson: It is critical to involve all relevant parties in the policy formulation process, including governments below the national level whose support will necessary to implement the policy. No matter how well the policy is perceived, its success may be jeopardised if parties tasked with implementation choose not to participate because of opposition to, or lack of a 'sense of ownership' in, the policy. Any concerns of regional government must be addressed upfront, especially if their support is critical to implementation.

Role of NGOs

The Marine and Coastal Community Network (**MCCN**) provided a coordinating role for a range of community-based organisations and was funded under a government initiative known as the Coasts and Clean Seas initiative. MCCN were very involved in gaining public comment on key Issues Papers. An international NGO, the Australian Committee of the International Union for the Conservation of Nature, also held a meeting in May 1997 to discuss the 'New Horizons' Consultation Paper.²¹

Lesson: Local and international NGOs can provide a useful role in securing community support in the policy making process and providing policy inputs.

¹⁵ Gordon Claridge and CL Claridge, *Socio-cultural Considerations Issues Paper 5: Expanding the Role of Collaborative Management and Stewardship in the Conservation Management of Australia's Marine and Coastal Resources*, (Environment Australia, October 1997).

¹⁶ Dermot Smyth, *Socio-cultural Considerations Issues Paper 6: Socio-cultural – Saltwater Country, Aboriginal and Torres Strait Islander Interest in Ocean Policy Development and Implementation*, (Environment Australia, October 1997).

¹⁷ Trevor Ward et al, *Biodiversity Conservation Issues Paper 7*, (Environment Australia, November 1997).

¹⁸ Australia's *Oceans Policy*, above n 6, 2 .

¹⁹ Keith Sainsbury et al, *Oceans Planning & Management Issues Paper 1: multiple use management in Australian Marine Environment - Principles, Definitions and Elements*, (Environment Australia, June 1997), Introduction.

²⁰ Joanna Vince, 'Australia's Oceans Policy: Five Years of Integration Across Sectors and Jurisdictions?' (2003) 133 *Maritime Studies* 1, 3.

²¹ Also noteworthy is the Australian Conservation Foundation and National Environmental Law Association publication produced in 2006: Smyth, C., Lee, M., Prof Rob Fowler, R., Rose, G. L. and Haward, M. (2006). *Out of the Blue: An Act for Australia's Oceans*. Australia: Australian Conservation Association.

2. POLICY CONTENT

Coverage of both resource development and management of resources

The National Oceans Policy was published as Volume 1 of the *Oceans Policy* and Volume 2 *Specific Sectoral Measures*. A separate *Marine Industry Development Strategy* had been released in July 1997.

In Volume 1 there is a chapter on Ocean Uses and Impacts which covers:

- Fisheries and Aquaculture – management, by-catch and environmental impact assessment;
- Offshore Petroleum and Minerals; and
- Shipping - ship building industry, national management and regulatory framework, ballast water, marine pest incursion management, and use of anti-fouling paint.

Volume 2 provides additional detail on ocean uses and impacts under the headings of:

- Conservation of marine biological diversity
- Fisheries
- Aquaculture
- Offshore petroleum and minerals
- Pollution of the marine environment
- Shipping
- Marine tourism
- Marine construction, engineering and other industries
- Pharmaceutical, biotechnology and genetic resources
- Alternative energy sources
- Aboriginal and Torres Strait Islander peoples' responsibilities and interests
- Natural and cultural heritage.

Discussion of each topic is structured under the headings 'The Challenge', 'Background', and 'Response'. The response includes both measures to promote the industry and to protect the environment.

Lesson: Marine industry development strategy raises distinct issues that can be treated separately from managing the marine environment. However, consideration of specific measures to promote an industry and measures to protect the environment can be placed together to demonstrate a balanced approach.

Core of Australia's Oceans Policy: integrated and ecosystem-based oceans planning and management

A core element of the policy is a commitment to *ecosystem-based management* as implemented through a regional marine planning process based on the identification of large marine ecosystems. The goal of the Regional Marine Plans (RMPs) was to determine the conservation requirements of each marine region including the establishment of marine protected areas, to prevent potential conflict between sectors in relation to resource allocation and to provide long term security to all ocean users.²² This cross-sectoral management was considered key to the policy.

The *integration* of sectoral commercial interests (e.g. fisheries, shipping, petroleum, gas and seabed resources) and conservation requirements was to be achieved through the implementation of the RMPs. All Commonwealth agencies were to be required to operate in accordance with the Plans.²³

Lesson: A new strategic IOM policy needs a core commitment to introduce ecosystem-based management that crosses strictly sectoral planning.

Statement of actions to be taken

²² Australia's Oceans Policy, above n 6, 11.

²³ Ibid 13.

The Oceans Policy contains 390 commitments across 5 broad areas. The first was that the government would provide \$50 million over three years for the implementation of these initiatives. Examples of key initial actions were:

- the provision of financial support;
- new institutional arrangements;
- development of RMPs;
- national marine resource surveys, sustainability indicators and monitoring;
- accelerating the development of the National Representative System of Marine Protected Areas;
- nominate the Great White Shark for international protection;
- create the Australian Whale Sanctuary;
- continue to pursue an international ban on commercial whaling;
- carry out a comprehensive review of our fisheries laws and regulations by July 1999 to streamline procedures and minimise compliance costs for small businesses;
- finalise and implement a Commonwealth Fisheries Bycatch Policy;
- undertake strategic environmental impact assessments of all new management plans for Commonwealth fisheries, and, within a five year period, all those fisheries that do not have a management plan; and
- spend an additional \$33 million over four years to help identify new offshore oil zones in Australia's Exclusive Economic Zone, including the southern continental margin of the Great Australian Bight.

Most of these commitments have been met but some major commitments such as RMPs and new institutional arrangements have not come to fruition. However, the very fact that detailed commitments were formally stated provides a level of transparency to subsequent government policy making.

Lesson: Formal statement of commitments will provide transparency in implementation and subsequent policy making. Without express commitments it is not possible to monitor the evolution of government policy.

Creating an institutional base for policy development, implementation and evaluation

A critical reform was to be the creation of an institutional base for policy development, implementation, and evaluation. This was important to ensure valid policy outcomes were accepted across relevant sectors (horizontal coordination) and to generate support for the policy by state/territory governments (vertical coordination).²⁴ The options that were considered were as follows:

- improve consultation processes within existing sectoral arrangements;
- appoint an Oceans Policy Advocate with no regulatory powers, but with responsibility to promote cooperative solutions within existing arrangements;
- focus on particular cross-sectoral and cross-jurisdictional issues and design specific purpose responses for each case within existing mechanisms; or
- establish a Commonwealth/State ministerial body for managing cross-sectoral issues.

A decision was made to establish a *National Oceans Office (NOO)* to monitor implementation of the 390 policy initiatives. The Director of NOO reported directly to the Minister for Environment and, through the Minister, to a *National Oceans Ministerial Board (the Board)*. The Board was comprised of the Commonwealth Ministers of Environment and Heritage (Chair), Transport and Regional Services, Industry, Science and Resources, Agriculture, Fisheries and Forestry and Sport and Tourism. The Board was to coordinate policy issues affecting the Commonwealth jurisdiction and

²⁴ Richard Herr and Marcus Haward, 'Australia's Oceans Policy: Policy and Process' in Haward (ed) *Integrated Oceans Management: Issues in Implementing Australia's Oceans Policy* (Cooperative Research Centre for Antarctica and the Southern Ocean, 2001) 7. The Commonwealth government did not intend to over-ride state and territory governments or threaten the cooperative basis of the Offshore Constitutional Settlement that had set out an agreement between the States and the Commonwealth regarding their respective jurisdictions.

provide a mechanism for consultation on programme expenditure and marine research priorities. A *National Oceans Advisory Group (NOAG)* took over from the MAG (with substantial continuity of membership) and had the role of advising the NOO.

Subsequently, the role of the NOO was changed to focus more on a government initiative called the Coasts and Clean Seas Initiative. It was later absorbed into the Department of Environment and Heritage. Notably, a Commonwealth/State ministerial body for managing cross-sectoral issues did not eventuate.

Lesson: It is important to formally state commitments relating to the institutional base for policy development, implementation and evaluation to provide transparency in implementation and subsequent policy making; without express commitments it would not be possible to monitor the evolution of government policy.

It can be seen from the commitments relating to the institutional base for policy development, implementation, and evaluation that state/territory governments were insufficiently included in proposed new institutional arrangements. Also, the lack of any legislative foundation for the commitments provided flexibility in altering those arrangements later on.

Financial commitments

The Issues Papers noted actions in each section may include some that are currently in place; some that may be under active consideration; and new proposals suggested for consideration as components of Australia's Oceans Policy. These actions include three categories of items:

- a) no budgetary implications;
- b) currently funded under existing programs; and
- c) initiatives that would require new funding.

Commonwealth funding for the Oceans Policy was announced during the 1998 federal election campaign, as part of the government's environment policy. This policy committed the ruling party to spending AUS\$50 million over three years as a matter of high priority. This was considered a significant level of funding.

Lesson: While specific monetary amounts may not be necessary at the outset of policy discussion, the budgetary implications of actions for the development and implementation of policy should be considered as the policy is developed. This can become the basis for future specific funding commitments.

3. POLICY IMPLEMENTATION

Whilst some of the action items set out in the *Oceans Policy* have been implemented, many have not, including preparation of RMPs and establishment of new institutions. The Federal government's approach to oceans management is still predominantly sectoral based and lacks any significant cross-jurisdictional integration.

The issues that the policy was meant to tackle have come up in various reports since the preparation of the *Oceans Policy*.²⁵ The consensus appears to be that Australia's marine biodiversity and ecosystems are in a state of continuing, if gradual, decline with the five most significant threats to marine biodiversity being climate change, resource extraction, land-based impacts, marine biosecurity, and marine pollution. These findings reveal weaknesses in the implementation of the *Oceans Policy*, which can be traced back to the policy content and approach.

The challenge of vertical integration

It has been recognised that a main challenge to managing Australia's coastal and marine environment relates to the relationship between coastal land uses, near shore developments and the wider ocean ecosystems.²⁶ The arrangements under cooperative federalism adopted by the Australian government provide particular challenges for coordination of this relationship between levels of government and remain problematic to this day.

In retrospect, this failure can be traced to the policy formulation process. A practical integrated approach to marine management necessarily involves state/territory governments because they have jurisdiction in the coastal zone of up to 3 nm – and in some instances beyond – as well as jurisdiction over most on-shore activities affecting coastal waters. Commonwealth actions, though, gave short shrift to early development of implementation and seriously limited state/territory formal involvement in preparation of the final policy document. The States and Territory raised concerns about the lack of state representation in the decision-making framework,²⁷ and as noted above, the MAG did not include any formal representation from the States.²⁸ The National Oceans Ministerial Board proposed by the National Oceans Policy also had no State or Territory representation, but included only Commonwealth Ministers.

Lesson: Vertical integration needs to be addressed at the early stages of policy formulation and should also guide the approach taken in structuring inter-governmental participation processes. Those ultimately responsible for implementation must also be included in the decision making process.

The challenge of horizontal integration

The *National Oceans Ministerial Board* was designed to oversee implementation and provided a mechanism for cross-sectoral integration. However, the Board was dissolved in 2004, and lead responsibility for implementation of the AOP was vested in the Minister for the Environment, in consultation with other ministers as required. The NOO was also merged into the Marine Division of the Department of Environment, transforming from a cross-departmental body to a sectoral body within one department.

Lesson: Implementing institutional arrangements to achieve horizontal integration across sectors is a major challenge. At a later date there may be a tendency to pull away from this challenge and base

²⁵ See, eg, Marine Biodiversity Decline Working Group, *A National Approach to Addressing Marine Biodiversity Decline – Report to the Natural Resource Management Ministerial Council* (2008) <<http://www.environment.gov.au/system/files/resources/060fc5f4-41e6-4d3b-88d4-f73fa7ed95b3/files/marine-diversity-decline.pdf>>; Commonwealth of Australia, Department of Sustainability, Environment, Water, Population and Communities, *State of the Environment* (2011) ("SoE") ch 6. <<http://www.environment.gov.au/science/soe/2011>>.

²⁶ Allan Hawke, *The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth, October 2009) 11.81

<<http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf>>.

²⁷ Martin Tsamenyi & Richard Kenchington, 'Australian Oceans Policymaking' (2012) 40 *Coastal Management* 119.

²⁸ Herr and Haward, above note 24, 6.

decision making within a particular ministry, which can hinder true cross-departmental or cross ministerial integration.

Regional Marine Planning

Implementation of the *Oceans Policy* through development of RMPs did not progress as envisioned. In August 2002, the Federal Government commissioned a review of the *Oceans Policy* process. While the review re-emphasised the importance of the policy and the Commonwealth's commitment to it, the review nevertheless identified a number of deficiencies that hindered effective and timely development of RMPs:

- the complex nature of RMPs and an underestimation of the magnitude of the task;
- a lack of a detailed implementation framework in the *Oceans Policy*;
- a lack of a clear framework for stakeholder consultation; and
- a lack of involvement from the states and Northern Territory.

While a Southeast Regional Management Plan was completed in 2004, it was the only RMP completed under the *Oceans Policy* process. The RMP process was abandoned in October 2005 and replaced by an extension to marine areas of the bioregional planning process under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).²⁹ Instead of RMPs, somewhat less ambitious Marine Bioregional Plans (**MBPs**) would be developed for five Commonwealth marine areas.

The current MBP planning process can be seen as relatively less ambitious than the RMP process. This is because it does not fully reflect the *Oceans Policy*'s original concept of regional marine planning. As a jurisdictional matter, MBPs only apply to Commonwealth marine areas, generally referring to waters of the sea inside the seaward boundary of the EEZ excluding those waters where title has been vested in a State or Northern Territory. Unlike RMPs, they are also not binding on all Commonwealth agencies in their planning and decision making. MBPs are only binding on the Minister for Environment, who must have regard to the applicable MBP when making a decision whether or not to approve an action under the EPBC Act.³⁰ The lengthy approval process is not required where a MBP exists; the action is to be carried out in accordance with the plan; and the Minister so declares.³¹

In addition to this reduction in trans-departmental and jurisdictional integration, MBPs can also be seen as lacking in the sectoral integration envisioned for RMPs. Biodiversity conservation and protection became the primary focus of marine planning at the expense of assessing and integrating economic and environmental considerations.

Lesson: The expectations of any new regional planning process need to be clearly set out. In particular, it needs to be clear as to whether a plan or strategic document will cover more difficult issues of resource allocation and resolution of conflict between resource users. A framework for implementation and expectations governing the relationship of stakeholders to the process must also be spelled out.

Marine Protected Areas

Considerable progress has been made on setting up a National Representative System of Marine Protected Areas (**NRSMPA**) throughout the entire Commonwealth marine area. This was an original commitment of the *Oceans Policy*. The NRSMPA aims to capture the diversity of marine ecosystems and habitats in Australia's oceans and currently covers more than one third of the Commonwealth marine area.³²

Every Commonwealth Marine Protected Area (**MPA**) has been assigned to one or more of the International Union for Conservation of Nature (**IUCN**) reserve categories and is to be managed under associated management criteria. Levels of protection under the various IUCN reserve categories can

²⁹ EPBC Act Part 12; see also, s176.

³⁰ EPBC Act s 176(5).

³¹ Ibid ss 37, 37A-J.

³² See http://www.environment.gov.au/system/files/pages/2ed9e96f-d06b-460b-81de-8cd11f2ea66f/files/national-map_0.pdf.

range from the prohibition of all extractive activities to permitting a wide range of extractive uses that includes commercial fishing and mining. Management plans are currently undergoing review for 4 of the 5 regional networks and the Coral Sea reserve.³³ The management plan for the South-east regional network, which stretches from the far south coast of New South Wales, around Tasmania and Victoria, and west to Kangaroo Island off South Australia, and includes a network of 14 Commonwealth Marine Reserves, has commenced operation and is not included in the review.

In State/Northern Territory waters there are also MPAs established under the laws of the relevant state or territory. This has usually been done under fisheries law (to protect important habitat and nursery areas) or under specific marine parks legislation.³⁴ Each MPA is intended to have a 10-year management plan and specifies zones and permitted uses within each zone. This includes no-take zones for commercial and recreational fishing. In most States, however, establishing no-take zones has been contentious.

Critique of Marine Protected Areas in Australia

A general criticism of MPAs in Australia is that the coverage is incomplete, especially in respect of the highest protection categories. The principles under which MPAs are categorised require that the full range of ecosystems and respective diversity across each bioregion be included within a MPA network. Notably, a pattern is emerging whereby marine reserves are being located in residual areas with the least promise for commercial use, often in an exercise of political pragmatism. The current network has very few protected areas within the most degraded areas of our marine environment found closest to shore particularly in the South-east and South-west regions. There are no clear nationally-consistent guidelines for applying the relevant principles for MPA categorisation to inform the prioritisation and selection of areas.

There has been some inter-governmental coordination of efforts relevant to MPAs. However, the lack of jurisdictional integration that hampered implementation of the Oceans Policy also effects MPA planning.

There is inadequate connectivity between MPAs, especially as between those established under Commonwealth and separate state/territory processes. Inter-jurisdictional MPA planning to protect mutual interests is very limited.³⁵ This fragmented approach to marine planning and management is considered a “critical impediment” to adequate and representative conservation of Australia’s marine environment.³⁶

Furthermore, more than 60 percent of the Commonwealth marine area is not covered by the NRSMPA. In relation to environmental protection, this area of sea is governed by the EPBC Act. Aside from marine bioregional planning mentioned above and the strategic assessment process that applies to Commonwealth fisheries,³⁷ the EPBC Act is essentially reactive. It establishes a procedure to assess a proposed action by establishing approval requirements and an environmental assessment process for actions that have, will have or are likely to have a significant impact on a matter of national environmental significance (**MNES**).

Lesson: Provision of MPAs is an important part of a national oceans management policy. Use of internationally recognised standards for categorization, such as the IUCN standards, provides consistency with international practice.

However, obstacles are likely to arise in providing for levels of protection involving no-take zones, especially in areas where there is strong commercial interest in extractive activity. These obstacles should be anticipated and procedures devised to ensure science-based decision making, as well as involvement of all stakeholders.

Uncertainty about mechanisms for coordinating management of MPAs that cross jurisdictional boundaries may be overcome by site specific arrangements, but would be better approached holistically.

³³ See Commonwealth of Australia, *About the Commonwealth Marine Reserves Review* ><http://www.environment.gov.au/marinereservesreview/about>>.

³⁴ See, eg, *Marine Parks Act 1997 (NSW)*.

³⁵ SoE, above n 25, 439.

³⁶ *Ibid* 440.

The legislative framework for Australia's Oceans Policy

The *Oceans Policy* stated that 'In developing the framework for Regional Marine Planning, the Government will consult with stakeholders on the need for and form of a statutory base for the development and implementation of Regional Marine Planning'.³⁸ However, a statutory base did not eventuate and, the *Oceans Policy* remained a policy-based initiative.

Over the years, conservation organisations and environmental lawyers have argued that legislation on oceans planning and management is needed to provide for more comprehensive marine spatial planning. They have also called for new institutions such as an *Australian Oceans Commission* and an *Australian Oceans Fund*.³⁹ There is consensus amongst professionals working in coastal and marine management that planning and management processes need to be revitalised. Steps have been identified, including prioritisation of marine conservation in the national interest 'allowing for well-planned and sustainable economic use of agreed zones', ensuring science-based decision-making to ensure 'precautionary and balanced decisions', a 'national vision with measurable targets and timelines', and 'reinvigorated integrated marine planning'.⁴⁰

National oceans law reform is also being recommended together with the formation of a National Oceans Commission.⁴¹ It is being suggested that an *Oceans Commission* could assess development applications for resources use in marine areas having regard to, among other things, significant environmental, social, economic and cultural impacts, cumulative impacts, the relevant regional management plan, environmental impact assessment, international and national implications.

Lesson: A commitment to a statutory base for the development and implementation of a new planning process needs to be given prominence and followed up. The passing of an Oceans Policy will not avoid the need to consider in detail the legal requirements of marine spatial planning and the legislative basis for new approval processes and institutions such as a national oceans planning and management institution.

³⁸ *Australia's Oceans Policy*, above n 6, 12.

³⁹ Katherine Wells and Amanda Cornwall, 'Managing Australia's Ocean Resources: the next step' 2012(2) *National Environmental Law Review*, 37.

⁴⁰ Australian Committee for IUCN Inc., *Conserving Australia's Marine Environment – Key Directions Statement*, 2013 <http://www.aciucn.org.au>. This document includes 23 Key Directions agreed in consultation with 100 multi-disciplinary marine experts.

⁴¹ *Ibid* (Key Direction 3).

APPENDIX B

CASE STUDY 2

LESSONS LEARNED FROM CANADA'S OCEANS POLICY

INTRODUCTION

In 1987, Canada announced the development of an Oceans Strategy. The objective of the strategy was said to be to secure social, economic, scientific and sovereignty benefits from Canada's oceans estate. Prior to finalising the strategy, Canada's *Oceans Act 1997* (the **Oceans Act**) was passed to establish an enabling framework for the development of a National Oceans Management Strategy. A national oceans management strategy was released in 2002 and was followed by the development of the 2004 *Oceans Action Plan*.

This case study will focus on the 2002 policy document entitled *Canada's Oceans Strategy: Our Oceans, Our Future* (**Oceans Strategy**) and the 2004 *Oceans Action Plan*, particularly the following aspects:

a. the process of policy formulation; b. policy content; and c. progress with implementation.

While some progress has been made in Canada, serious weaknesses remain. Policy on oceans management remains a 'work in progress'. This case study will briefly review the experience in Canada to identify the most promising approaches in relation to capacity to deliver desired results, as well as sources of weaknesses that have arisen in implementation. Lessons gleaned from process of policy formulation, policy content and implementation will be highlighted.

Understanding jurisdictional responsibility is important to understanding Canada's oceans management strategy. Under the *Oceans Act*, the Provincial and Territorial governments have responsibility for any area of the sea that forms part of the internal waters of Canada or the territorial sea of Canada.¹ The territorial sea of Canada consists of a belt of sea from the nearest point of the baseline, which is usually the low water line along the coast, out 12 nautical miles.² Federal government has responsibility for all other waters, along with the seabed and subsoil below the internal waters of Canada.³ Hence, it can be seen that oceans management requires vertical coordination between Provincial and Federal government.

1. PROCESS OF POLICY FORMULATION

Canada's policy formulation took place in three stages as follows:

- *Oceans Act 1997*;
- *Canada's Oceans Strategy: Our Oceans, Our Future 2002*; and
- *Canada's Oceans Action Plan (2004)*.

The *Oceans Act* is an 'enabling' Act. It sets out the maritime zones, the principles of the strategy, the duties, powers and functions of the Minister of Fisheries and Oceans, and provides for the making of an Oceans Management Strategy. The legislation is relatively brief, and the authority given to the Minister is quite broad in facilitating development and implementation of a national strategy for all Canadian waters.

The legislation makes clear that the strategy is to be a national strategy; not only for the oceans but for the management of estuarine, coastal and marine ecosystems in waters that form part of Canada or in which Canada has sovereign rights under international law.⁴

¹ *Oceans Act 1997* s 9.

² *Ibid* ss 4-5.

³ *Ibid* s 8.

⁴ *Ibid* s 29.

A commitment to develop integrated management plans was set out in the *Oceans Act* itself. The *Oceans Act*, however, does not establish a legislative requirement to undertake marine spatial planning.

Lesson: Enabling legislation can provide a starting point to endorse the process of developing a national oceans policy/strategy. It can also provide the basis for providing government authority to commence the process of spatial marine planning. However, subsequent experience in implementation (see below) may lead to calls for more detailed legislative provisions to provide for spatial marine planning.

Political leadership

Little information is available regarding the political leadership involved in promoting the development of Canada's marine policy, in comparison to the UK and Australia. The enactment of new enabling legislation, does suggest a high level of commitment by politicians at that time.

Institutional leadership

Pursuant to the *Oceans Act*:

the Minister, in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, *shall lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law*' (emphasis added).⁵

The *Oceans Act* makes it clear that there is to be horizontal and vertical collaboration (including with Indigenous organisations) in the development and implementation of integrated management plans.

Characterising the policy documents

The *Oceans Strategy*⁶ was released in 2002 pursuant to the policy directions in the *Oceans Act*. By its own language, it provides a strategy for an integrated approach to ocean management, coordination of policies and programs across governments, and an ecosystem approach to planning.

The *Oceans Strategy*, subtitled 'Policy and Operational Framework for Integrated Management of Estuarine, Coastal And Marine Environments In Canada' includes within it sections entitled 'A Canadian Policy for Integrated Management' and 'An Operational Framework for Integrated Management' whose purpose was to explain exactly how the Canadian government would address its responsibilities for Integrated Management under both the *Oceans Act* and the *Oceans Strategy*.

The *Oceans Strategy* was intended as a 'working document' to 'foster discussion'⁷ about Integrated Management. However, the document also proposes a framework for governance, management by areas, a design for management bodies and the type of planning processes that could be involved. Its long term goal is to 'develop a system of nested Integrated Management plans for all of its marine waters, and to establish within these a national network of marine protected areas' (Executive Summary iv).

The *Oceans Strategy* seems to have more than one role – to be a discussion paper and to provide direction in implementing legislation. This dual role of the *Oceans Strategy* potentially weakens commitments expressed in it.

Lesson: The purpose behind of each type of policy-making document needs to be clearly identified. Examples include:

⁵ Ibid s 31. Ocean and coastal jurisdiction is shared between the Federal and provincial governments (part 1) and nothing in the *Oceans Act* abrogates or derogates any indigenous right (s 2.1)

⁶ Government of Canada, *Canada's Oceans Strategy: Our Oceans, Our Future – Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada*, (2002) Available at <<http://waves-vagues.dfo-mpo.gc.ca/Library/264678.pdf>>.

⁷ *Oceans Strategy*, above n 6, Executive Summary i.

- *Issues Paper*
- *Discussion Paper/Consultation Paper*
- *Background Paper*
- *Policy Statement*
- *Legislation*
- *Policy to guide the implementation of legislation.*

2. POLICY CONTENT

The *Oceans Act* provides the foundational principles under which the *Oceans Strategy* was developed:⁸

- a) “sustainable development, that is, development that meets the needs of the present without compromising the ability of future generations to meet their own needs;
- b) integrated management of activities in estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law; and
- c) the precautionary approach, that is, erring on the side of caution.”

The *Oceans Strategy* provides an ‘overall strategic framework for Canada’s oceans-related programs and policies’, based on these three principles.⁹ Its central governance mechanism is the application of these principles through the development and implementation of Integrated Management Plans. The integrated approach aims to establish decision-making structures that can reconcile tension between resource development and management of resources.

Core concept – Integrated Management

The core concept in the *Oceans Strategy* is the concept of Integrated Management, which is stated to involve:

comprehensive planning and managing of human activities to minimize the conflict among users; a collaborative approach that cannot be forced on anyone; and a flexible and transparent planning process that respects existing divisions of constitutional and departmental authority, and does not abrogate or derogate from any existing Aboriginal or treaty rights.¹⁰

The principles guiding Integrated Management are stated to include: ‘ecosystem-based management, sustainable development, the precautionary approach, conservation, shared responsibility, flexibility and inclusiveness.’ It is stated to be ‘in essence’ ‘a simple and common sense approach, representing a modern and qualitatively different way to use, protect and conserve Canada’s oceans and coastal waters’.¹¹

The long term goal is stated to ‘develop a system of nested Integrated Management plans for all of its marine waters, and to establish within these a national network of marine protected areas.’¹²

To say that Integrated Management is a ‘simple approach’ may have understated the task at hand; subsequent obstacles in implementation seem to indicate otherwise. Ecosystem-based management is not defined in the text and was relegated to the glossary where it is described in very general terms as ‘[t]he management of human activities so that ecosystems, their structure, function, composition, are maintained at *appropriate* temporal and spatial scales’ (emphasis added). This definition avoids stating how to assess what is an appropriate temporal or spatial scale.

The ‘essential elements’ involved in Integrated Management for an ocean or coastal area are stated to be as follows:¹³

⁸ *Oceans Act* s 30.

⁹ *Oceans Strategy*, above n 6, Executive Summary iii.

¹⁰ *Ibid* ii.

¹¹ *Ibid*.

¹² *Ibid* iv.

¹³ *Ibid* 7-9.

Planning on the basis of natural and economic systems rather than principally on political or administrative boundaries;

Identifying ecosystem-based management objectives, indicators and management targets/actions to guide decision makers;

Acknowledging the interrelationships that exist between coastal and ocean uses and their potential impacts on the ecosystem in a way that overcomes the fragmentation inherent in the sectoral management approach;

Integrating data collection, research, synthesis, and information sharing, communication and education as part of the full range of relevant knowledge to be applied to the planning and decision-making processes, local and traditional knowledge;

Creating a process to bring together affected and interested parties (federal and provincial, territorial, regional or Aboriginal authorities, industry, coastal communities, and environmental groups, and citizens);

Building a process of collaborative and co-operative planning that takes essential elements from sectoral management so that new work is not always necessary. This process involves using existing legislation, respecting regulatory authorities held by governments, and incorporating enhanced management practices;

Using existing governance structures, or establishing new ones, that address multiple interest and user conflicts and encourage all resource managers to consider social, cultural, economic and environmental impacts of decisions;

Analyzing implications of development, conflicting uses, and interrelationships between natural physical processes and human activities, and promoting linkages and harmonization among sectoral coastal and ocean activities;

Identifying new opportunities for diversification and wealth creation, increased knowledge bases, supporting information networks and building capacity, confidence, trust and respect among participants;

Considering cumulative effects: the need to understand and consider the potential of current and approved future human activities and the associated cumulative effects;

Implementing Integrated Management plans using adaptive management techniques, with outcomes monitored against specific objectives and plans altered in accordance with findings; and

Harmonizing planning, management and regulatory policies and actions to increase effectiveness of sustainable development and conservation efforts.

Lesson: The Oceans Strategy presents a management-based process which does not envisage changes in governance structures or reconsideration of regulatory policies. Query whether this was realistic in light of subsequent failures and other difficulties in implementation. Subsequent reviews of the process have concluded that the lack of any legislative requirement for the planning process has made it slow to fully implement.

Large Ocean Management Areas

One activity identified in the *Oceans Strategy* is supporting the planning processes for Large Ocean Management Areas (**LOMAs**). The Operational Framework explains that each LOMA covers a large portion of one of Canada's three oceans or coastal zones, typically extending from the coast out to the limit of Canada's jurisdiction, for example, the Eastern Scotian Shelf Integrated Management Area; the Gulf of St. Lawrence; and the Beaufort Sea in the Arctic. According to the Operational Framework, ecosystem-based management objectives will be established for each LOMA.

Coastal Management Areas

Coastal Management Areas (**CMAs**) are also established. These are smaller areas designed to be nested onto the LOMAs as stated '[i]n a logical flow, ecosystem-based management objectives

identified at the Large Ocean Management Area scale will need to be reflected in Marine Environmental Quality objectives and guidelines for the Coastal Management Areas'.¹⁴

Lesson: It is important to recognise the interrelationship between large ocean management areas and coastal management areas.

Creating an institutional base for policy development, implementation and evaluation

The *Oceans Strategy* proposed the establishment of an Integrated Management body composed of both governmental and non-governmental representatives with interests *in a given ocean space* (emphasis added). In this way, the institutional base is related to the particular area that is being planned for. As stated in the *Oceans Strategy*, '[t]he specific composition and role of Integrated Management bodies will vary, depending on the scale of the initiative, the complexity of the issues, local and regional infrastructures and local capacity, local circumstances, the actual management area, issues and the level of concern'.¹⁵

Lesson: This approach does not involve the creation of an additional national body, but envisages flexibility so as to align with the interests in a given ocean space. This approach ensures local involvement (particularly of Canada's First Nation communities) and may be appropriate for Fiji for this reason.

3. POLICY IMPLEMENTATION

Oceans Action Plan

In 2004, the Minister developed an Oceans Action Plan (**OAP**)¹⁶ to assist in implementation of the Oceans Strategy.¹⁷

Phase 1 of the OAP was to provide specific initiatives for longer term government investment in oceans management. Integrated management plans were to be cooperatively developed by federal, provincial, territorial and aboriginal authorities for five priority integrated management areas.¹⁸ Two fundamental outcomes were stated as follows:¹⁹

- the establishment of open and collaborative oceans governance and management arrangements amongst governments at all levels, with stakeholders directly affected by those government decisions, and with citizens and interested parties who have an interest in decisions affecting that oceans area; and,
- the establishment of ecosystem-based approaches to science and management advice to provide more informed and comprehensive advice in support of oceans decision-making.

The primary objectives of Phase 1 of the OAP were: to identify areas and spaces in need of special management and conservation measures, carry out seabed mapping providing imagery of seabed characteristics and features, and to apply an ecosystem-based management approach.²⁰

A number of activities were expressly set out to be undertaken within certain planning areas,²¹ namely:

- Placenta Bay and the Grand Banks - establishing new local planning committees for integrated marine management, setting up a technological advisory council, development of science management frameworks;
- The Scotian Shelf – implementing new governance arrangements, concluding and implementing a draft integrated management framework, development of a coastal management plan; and

¹⁴ Oceans Strategy, above n 6, 19.

¹⁵ Ibid 20.

¹⁶ *Canada's Oceans Action Plan* (Department of Fisheries and Oceans, 2005) (OAP).

¹⁷ As enabled by Oceans Act s 32(a), which states that the Minister 'shall develop and implement policies and programs with respect to matters assigned by law to the Minister'.

¹⁸ OAP, above n 16, 13-15.

¹⁹ Ibid 15.

²⁰ Ibid 16.

²¹ Ibid 13-15.

- Pacific North Coast – development of proactive means for First Nations involvement in marine and coastal resources management.

In relation to the other two priority areas, The Gulf of St. Lawrence and The Beaufort Sea, the OAP was less specific.

Phase 1 of the OAP was completed within the designated 24 months. Activities included assessment of the state of the health of marine ecosystems, mapping of the areas of seabed, and identification of ecologically sensitive areas. Reviews generally concluded success in implementation of Phase 1 initiatives.²²

Phase 2 of the plan as identified in the OAP was to broaden the geographic scope of oceans management, deepen action across the Government, and take advantage of lessons learned in Phase 1.²³ As carried out between 2007 – 2011, there was more limited progress, which may be attributed, in part, to reduced financial and human resource commitments.²⁴

This lack of progress may also be attributed to general scepticism toward new regulation on the part of the then government, which had changed from the time of the enactment of the *Oceans Act*. The Government, for example, unilaterally re-scoped the plan for the Pacific Coast LOMA, the Pacific North Coast Integrated Management Area Plan, in September 2011 to remove key sectoral matters from discussion.²⁵ According to a 2013 Royal Society of Canada Report, the Government reported that the planning process under that agreement had become very detailed and too prescriptive and that it would instead pursue a document 'at the appropriate level of planning.'²⁶ The resulting draft plan that was released was criticised as failing to include elements such as spatial design related to marine uses that would allow for a plan that could be fully implemented.²⁷

Similar problems befell the Eastern Scotian Shelf Integrated Management (**ESSIM**) Initiative, another of the LOMAs envisioned by the Oceans Strategy. The Department for Fisheries & Oceans (**DFO**) had applied integrated oceans management in the ESSIM Area covering more than 325,000 square kilometres off the coast of Nova Scotia. The ESSIM was one of the LOMAs envisioned in the Oceans Strategy.²⁸ The ESSIM Strategic Plan was a five year plan (2006 - 2011) for the integrated management of all policies, programmes, sectoral plans, measures and activities in or affecting the Eastern Scotian Shelf LOMA.

Implementation of the plan, stalled when the initiative was terminated in April 2012 after the Government failed to endorse a stakeholder driven plan.²⁹ Although the initiative ended, a 2013 review of the ESSIM planning process by the Canadian government indicated that integrated oceans management in some form would continue.³⁰ Whilst the review also noted that spatial planning had been undertaken,³¹ a Royal Society of Canada report concluded that the LOMA process as a whole did not stand out for its marine spatial planning efforts.³²

²² See, eg, Camille Mageau, et al, 'Ocean Policy: A Canadian Case Study' (2010) in Biliana Cecin-Sain, et al (eds), *Integrated National and Regional Ocean Policies: Comparative Practices and Future Prospects* (United Nations University Press, forthcoming) 82-83. <<https://ssrn.com/abstract=2112275>>; *Evaluation of Parks Canada's Phase One of Oceans Action Plan* (Office of Internal Audit and Evaluation, Parks Canada, 2007) 11-16.

²³ OAP, above n 16, 5.

²⁴ Camille Mageau, et al, *Routledge Handbook of National and Regional Ocean Policies* (Routledge, 2015) 117; J A Hutchings, et al, *Sustaining Canadian Marine Biodiversity: Responding to the Challenges Posed by Climate Change, Fisheries, and Aquaculture* (Royal Society of Canada, 2012) 186.

²⁵ BC Commercial Fishing Caucus, *A Petition to the Auditor General of Canada Respecting the Lack of Progress on Sustainable Prosperity for Canada's Oceans* (22 November 2013) <http://www.oag-bvg.gc.ca/internet/English/pet_354_e_39108.html>.

²⁶ Hutchings, above n 24, 187.

²⁷ BC Commercial Fishing Caucus, above n 25.

²⁸ OAP, above n 16, 16-19.

²⁹ Department of Fisheries and Oceans.

³⁰ Julia McCuaig and Glen Herbert (eds) *Review and Evaluation of the Eastern Scotian Shelf Integrated Management (ESSIM) Initiative* (Department of Fisheries and Oceans, 2013) 71.

³¹ *Ibid* 72.

³² Mageau, above n 24, 119.

Lesson: Attempts to implement the OAP at the LOMA level provides two lessons. The first is political; “buy in” to an initiative is necessary if long-term success is to be achieved. The second is technical; implementation may be weakened by use of a management-based approach rather than a spatial planning approach.

Marine Protected Areas (MPAs)

The *Oceans Act* obligates the Minister to lead and coordinate the development of a national system of MPAs (s 35). The *Oceans Strategy* states that Canada’s ‘long term goal is to develop a system of nested Integrated Management plans for all of its marine waters, and to establish within these a national network of marine protected areas’.³³ It states that the Minister of Fisheries and Oceans is to lead and coordinate the development of a national system of MPAs.³⁴

In 2005, DFO released Canada’s *Federal Marine Protected Areas Strategy* to clarify the roles and responsibilities of federal departments and agencies. Importantly, there is no one government body responsible for MPAs. Canada’s federal MPA network is comprised of three programmes:

1. marine protected areas – established by Fisheries and Oceans Canada under the *Oceans Act* to protect and conserve important fish and marine mammal habitats, endangered marine species, unique features and areas of high biological productivity or biodiversity
2. marine wildlife areas – established by Environment Canada to protect and conserve habitat for a variety of wildlife, including migratory birds and endangered species.
3. national marine conservation areas – established by Parks Canada to protect and conserve representative examples of Canada’s natural and cultural marine heritage, and to provide opportunities for public education and enjoyment.

In September 2011, a *National Framework for Canada’s Network of Marine Protected Areas* was approved in principle by the Canadian Council of Fisheries and Aquaculture Ministers. This document, developed through federal-provincial-territorial collaboration, provides direction for the design of a national network of marine protected areas that will be composed of 13 bioregional networks. A previous draft of the *National Framework* was posted online for an 81-day public comment period (December 2010 - February 2011) as a final step in a lengthy consultation process.

According to DFO³⁵ as of 23 August 2016 ‘existing marine protected areas cover over 56 000 square kilometres of Canada’s oceans and Great Lakes—roughly equivalent to the area of Nova Scotia. The breakdown of federal, provincial, and non-governmental agencies responsible for managing these marine protected areas is illustrated on the left, with the total number of marine protected areas managed by each jurisdiction shown in brackets in the legend. Out of the 797 marine protected areas captured in this report, 705 of them are managed provincially, 83 are managed federally, and the remaining nine are managed by either non-governmental organizations or through co-management arrangements. The level of protection provided by different jurisdictions varies, depending on both their mandate and the conservation objective(s) of the site.’ DFO information indicates eight MPAs have been designated under the *Oceans Act*.³⁶

Lesson: Provision of Marine Protected Areas should be an integral part of an Oceans policy.

Integrated Management

One of the key challenges in developing an integrated management system is to get buy-in from governmental departments and stakeholders related to the area itself. Area-based integrated management plans were developed as part of this process.

Lesson: An area-based integrated management system will lead agencies and stakeholders to have a sense of ownership and gain an increased understanding of the ecosystem alongside social and economic objectives in the area.

³³ Oceans Strategy, above n 6, Executive Summary iv.

³⁴ Ibid 6.

³⁵ *Spotlight on Marine Protected Areas in Canada* (Department of Fisheries and Oceans, 23 September 2016) <<http://www.dfo-mpo.gc.ca/oceans/publications/mpaspotlight-pleinsfeuxzpm/index-eng.html>>.

³⁶ *Learn about Canada’s Diverse and Unique Marine Protected Areas* (Department of Fisheries and Oceans, 26 June 2015) <<http://www.dfo-mpo.gc.ca/media/infocus-alaune/2015/MPA-ZPM/index-eng.htm>>.

Community involvement

The creation of CMAs enabled communities to play a strong role in the issues that affected their future by matching local capabilities and development priorities to the opportunities and carrying capacities of the local ecosystem. Local community groups were essential in ensuring that the planning process and associated actions were relevant to the area.

Lesson: Mechanisms or processes of public consultation processes matched to the particular locality are fundamental and are a way of relating local capabilities and development priorities to the opportunities and carrying capacities of the local ecosystem.

Operational tools and guidelines

Moving from the theoretical level of concepts (e.g. ecosystem-based management and the precautionary principle) to application in day-to-day decisions presented challenges. However, a focus on developing operational tools and guidelines for application did help Canadian practitioners overcome some of these challenges.

Lesson: Development of operational tools and guidelines will be important in implementation and should be provided for initial policy formulation.

Financial support and funding allocation

Sub-national authorities (i.e. Provincial, Territorial and Aboriginal), and non-governmental stakeholders may require capacity-building and incentives to participate in a national program. Financial investment is required to build integrated management, and may be an important incentive both at the federal and sub-national level.

Lesson: The implications of financial investment requirements for achieving vertical integration need to be fully considered.

The 2005 budget announced that \$28.4M would be allocated to fund Phase I of the OAP over two years, 2005-06 and 2006-07. For the 2007 federal budget, environmental organizations and the Department of Fisheries and Oceans were looking for several hundred million dollars to proceed with Phase II of the Oceans Action Plan. This would have enabled a comprehensive planning process, essential scientific research, and the designation of many new marine protected areas, as well as management reforms necessary for a conservation-based approach. However, the period from 2007 – 2011 saw reduced funding. In the 2007 Budget Speech, the total allocation of funding for the OAP was reduced to \$19M.

Lesson: Adequate funding is fundamental to long term sustainability and commitments should be identified in policy making.

Strengthening the knowledge base

Canada's Oceans Action Plan has recognized that ecosystem-based science needs to be strengthened; one of the pillars of the Plan is to enhance ocean science and technology.

Lesson: Eco-system based science needs to be a key component of policy development.

Time frames

Developing integrated management plans has been a lengthy process, in part due to the need to build capacity and relationships in order to bring participants at all levels to the table. However, the lack of legislative requirement for spatial planning in Canada has been given as a reason for the slowdown in the process of integrated management.³⁷

WWF-Canada describes Canada's "ocean agenda" as "enabling" rather than "directing". It is argued that 'Canada's oceans agenda is just 'too soft' to make a difference'.³⁸ This comment refers to the level of generality of the legislation and the lack of timeframes and detailed commitments in the policy

³⁷ Worldwide Wildlife Fund Canada, *Oceans Publications & Reports: Oceans*, <http://www.wwf.ca/newsroom/reports/oceans/>.

³⁸ Ibid.

document. Stakeholders have recently advocated for the need for regulatory change, so that there is a clearer mandate to undertake marine spatial planning in all of Canada's oceans.

Lesson: Integrated marine management capable of managing multiple use and ecosystem-based management is likely to require legislated support that is directive and regulatory in its approach.

APPENDIX C

CASE STUDY 3

LESSONS LEARNED FROM UK'S OCEANS POLICY

INTRODUCTION

In the past decade, the UK has come to the forefront of integrated oceans management. A comprehensive and integrated marine policy and legislative framework is now in place; the government's focus is now on implementation of the *Marine and Coastal Access Act 2009*. This case study will provide an overview focusing on the following aspects:

- a. the process of policy formulation;
- b. policy content; and
- c. implementation.

Understanding jurisdictional responsibility is important to understanding the UK's oceans management strategy. The UK is a unified national government with devolution of certain aspects of governance to Scotland, Wales, and Northern Ireland. Local authorities have responsibility for inland waters to the landward side of a baseline, with some exceptions related to fisheries. National authorities are responsible for all other areas of the coastline and seas commencing at the mean high water spring tide.¹

1. PROCESS OF POLICY FORMULATION

Summary of the process

In 1999 the Department of Environment, Food and Rural Affairs (**DEFRA**) established a Review of Marine Nature Conservation (**RMNC**) to examine how effectively the UK system for protecting nature conservation in the marine environment was working at the time and to make proposals for its improvement. The working group charged with undertaking this review outlined its findings in an interim report in March 2001. In July 2004, DEFRA published the final RMNC which identified examples of best practices and barriers to success. It also recommended a number of changes to UK marine conservation governance. Particularly important was the RMNC's recommendation that the government 'finalise and apply an overarching policy framework of strategic goals, objectives, targets and indicators which can apply to all elements of its strategic goals for the marine environment.'

Prior to finalising the RMNC, in May 2002, DEFRA released *Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment (SOS)*. This policy document sets out a vision for UK ocean policy and governance and became the fundamental framework outlining the UK government's ocean strategy. That strategy placed considerable emphasis on the need for full stakeholder participation. Shortly thereafter, in November 2002: DEFRA released *Seas of Change: The Government's Consultation Paper to Help Deliver our Vision for the Marine Environment*. This report detailed the stakeholder consultation process that would be implemented in accordance with the public engagement requirements outlined in the SOS. In March 2005, DEFRA released *Charting Progress: An Integrated Assessment of the State of UK Seas*, which included a comprehensive state of the marine environment assessment that had been promised in the SOS.

¹ The marine area subject to section 42 *Marine and Coastal Access Act 2009* can generally be summarised as follows:

- (a) the area of sea within the seaward limits of the territorial sea
- (b) any area of sea within the exclusive economic zone,
- (c) the area of sea within the limits of the UK sector of the continental shelf including the bed and subsoil of the sea within those areas.

'Sea' is defined as (s 43(3)):

- (a) any area submerged at mean high water spring tide, and
- (b) the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide.

Two years later, in March 2007, DEFRA released a White Paper entitled *A Sea Change: A Marine Bill White Paper (White Paper)* and an associated partial Regulatory Impact Assessment. The White Paper put forward proposals for legislative measures that would help deliver the government's vision of "clean, healthy, safe, productive and biologically diverse oceans and seas." This was, in effect, the overarching policy document that was called for in the RMNC. The Marine and Coastal Access Bill gained Royal Assent on 12 November 2009.

Hence, the process that led to the adoption of the *Marine and Coastal Access Act 2009 (the Marine Act)* involved a number of documents with specific roles as follows:

- Review of marine nature conservation (interim and final reports)
- Policy (vision) and framework for the strategy
- The proposed stakeholder consultation process
- State of the Environment Report
- White Paper for the Marine Bill
- Marine Act.

An initial focus on marine conservation was overtaken by a broader policy approach to encompass both conservation and sustainable development. The vision document was prepared by government before community consultation but included detail about how subsequent consultation would take place.

Lesson: IOM policy-making may take up to 10 years where the goal is a comprehensive oceans statute. It can be started through the release of a policy document that sets out a national vision for ocean policy and governance followed by an intensive consultation process. A review of marine nature conservation may start the policy making process but its findings are likely to be included in subsequent overarching policy.

Political leadership

Political commitment included official political party commitment to marine spatial planning. The 2005 election manifesto of the then ruling Labour Party included the following commitment:

Through a Marine Act, we will introduce a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs. To obtain best value from different uses of our valuable marine resources, we must maintain and protect the ecosystems on which they depend.²

Lesson: The release of a visionary policy may lead the political party in power to subsequently adopt the aspirations of the policy.

Institutional leadership

DEFRA took the lead in both the development and implementation of the policy. Notably, DEFRA's mandate covers food and rural affairs as well as the environment. This case study has not been able to determine how important it was that the Department was not solely focused on traditional environmental/conservation issues. It seems that DEFRA was successful in ensuring a legislated approach to IOM that would be binding across sectors.

Consultation Process

There is little available information about the consultation process that took place in formulating the 2002 SOS. Nevertheless, the SOS outlined the stakeholder consultation process that would be followed in order to deliver the vision provided by the SOS itself. The goal was to meet the requirement for effective public engagement to which the SOS was committed.

Lesson: The vision may be presented first and then followed by stakeholder engagement. If so, it will help gain confidence in the vision if it is made clear to stakeholders how consultation will be carried out.

² *The Labour Party Manifesto 2005* < <http://www.politicsresources.net/area/uk/ge05/man/lab/manifesto.pdf> > 101. The Labour Party remained in power until 2010, after the *Marine Act* entered into force.

Role of NGOs

NGOs such as the Marine Conservation Society, The Wildlife Trusts, World Wildlife Fund and RSBP campaigned for about 10 years for a national statute. When finally passed, the *Marine Act* was strongly welcomed by these organisations.³

Lesson: Demand for a new regime such as is envisioned in an IOM policy and new legislation should come from local interests and can be supported by local environmental NGOs.

2. POLICY CONTENT

As noted above, the SOS sets out a vision for UK ocean policy and governance and became the fundamental framework outlining the UK government's ocean strategy. It is a comprehensive statement of commitments consisting of nine chapters and an annex consisting of '[a] summary of targets and timescales for delivering our vision'.

It contains a vision which is expressed as follows: *Our vision for the marine environment is clean, healthy, safe, productive and biologically diverse oceans and seas. Within one generation we want to have made a real difference.*

New initiatives detailed in the SOS include how the government would:

- protect important habitats
- improve marine conservation
- press for sustainability
- become more integrated
- improve co-ordination in Government
- assess progress
- involve stakeholders
- deliver development goals
- afford more protection to marine species and habitats on the high seas
- improve marine scientific research
- develop environmental monitoring.

The nine chapters are as follows:

- Chapter 1 - Our vision and its delivery
- Chapter 2 - Protecting marine biodiversity
- Chapter 3 - Integrated coastal management
- Chapter 4 - Tackling pollution from land-based sources and dumping at sea
- Chapter 5 - The importance of shipping and ports
- Chapter 6 - The contribution of offshore activities and renewable energy
- Chapter 7 - Sustainable fisheries
- Chapter 8 - Facing up to climate change
- Chapter 9 - Making best use of marine science.

Each chapter concludes with a section on 'Taking things forward' in which the government makes very specific commitments. For example, in Chapter 4: Tackling pollution from land-based sources and dumping at sea, includes the following statements:

- *We will continue to work to prioritise additional hazardous substances for further action and ensure that risks from chemicals are minimised.*
- *We will work towards the OSPAR target of cessation of discharges, emissions and losses of hazardous substances by 2020.*
- *In tackling nutrients and eutrophication, we will complete the assessment of the eutrophication status of all UK marine waters, under OSPAR, by the end of this year. This will provide the basis for identifying those catchment areas from which nutrient inputs are either creating problems or have the potential to do so.*

³ WWF, Marine Conservation Society, *The Wildlife Trusts and RSPB Mobilising the Marine Act: Implementing Marine Spatial Planning in the UK*, (2010) < http://assets.wwf.org.uk/downloads/mobilising_the_marine_act.pdf>.

- *For radioactive substances, we will publish this year the final version of the UK Strategy for Radioactive Discharges 2001–2020.*
- *We will continue to encourage countries, particularly developing countries, to ratify the 1996 Protocol to the London Dumping Convention.*
- *To support the development of an ecosystem-based approach to managing our marine environment we will optimise the UK's marine environment monitoring system and develop a framework of indicators, which will include the Ecological Quality Objective developments within OSPAR.*
- *We will develop a first integrated assessment of the UK marine environment in 2004, which will help to demonstrate our progress towards an ecosystem-based approach.*

Annex A to SOS includes a 'summary of targets and timescales for delivering our vision', which adds to the public commitment by specifying a time by which the action is to have occurred.

Lesson: A visionary policy document should set out new initiatives showing how the government will achieve its goals. A public commitment to specific actions can help to bind government to deliver on their policies or at least make them accountable in their future performance.

Coverage of both resource development and management of resources

The structure of the SOS covers resources use and development, as well as protection and conservation. This is apparent from separate chapters on shipping and related ports activities, and offshore extractive resource activity and renewable energy, as well as sustainable fisheries and protection from land-based sources of pollution.

Lesson: In order to be fully integrated, an IOM policy should cover resources use and development, as well as protection and conservation.

Spatial Planning

The SOS addressed spatial planning, stating that '*we will explore the role of spatial planning for the marine environment and provide a focal point to build on existing seabed mapping for coastal waters around the UK*'.⁴ The SOS is explicit about the role of spatial planning even though it does not identify the specific instrument that will introduce the concept.

Lesson: An approach which explicitly endorses the goal of marine spatial planning but without identifying the actual methodology or instrument could provide a way forward to reach a goal of introducing spatial planning. It would put spatial planning 'on the table' for discussion together with the adoption of an ecosystem-based approach but leaving the details of the particular planning instrument to be determined after further consultation.

Ecosystem-based approach

The SOS states that an ecosystem-based approach would be taken in delivering the vision. It refers to the International Council for the Exploration of the Sea's working definition which defines it as 'the integrated management of human activities based on knowledge of ecosystem dynamics to achieve sustainable use of ecosystem goods and services, and maintenance of ecosystem integrity'.⁵

The SOS goes on to say that '[i]n other words, we need to better integrate marine protection objectives with sustainable social goals and economic growth and address conservation objectives alongside the full range of human activities and demands that we place on the marine environment'.⁶ It then elaborates in some detail on what this means by stating that it needs:

- *a management regime that maintains the health of ecosystems alongside appropriate human use of the marine environment;*
- *clear environmental objectives both at the general and specific level; and*
- *steps to ensure that sectoral actions do not compromise marine ecosystems and their constituent parts.*⁷

⁴ Department for Environment, Food, and Rural Affairs, *Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment* (2002) 3.

⁵ *Ibid* s 1.14.

⁶ *Ibid* s 1.15.

⁷ *Ibid* ss 1.17-1.18

Lesson: The policy should provide an internationally recognised definition of ecosystem-based management and then explain it in lay terms for easier public understanding.

Creating an institutional base for policy development, implementation and evaluation

The SOS did not announce an intention to establish any new institutions. Rather, it committed to undertake a comprehensive, factual review of all the institutions, laws and stakeholders that influence the coastal areas.⁸

Lesson: A policy does not need to announce new institutions but rather can give a commitment to undertake a comprehensive, factual review of all the institutions, laws and stakeholders that influence our coastal areas, delaying any commitment to structural change until such review is complete.

Addressing financial implications

Financial issues are not mentioned in the SOS; the words budget, finance or incentives do not appear within the whole document.

Lesson: At a macro level of policy-making it may not be necessary to make actual financial commitments. However, that will be required in more detailed policy-making.

3. POLICY IMPLEMENTATION

The SOS was implemented through a series of consultations, ultimately resulting in the *Marine Act*. This statute, which mainly affects England and Wales, is very broad legislation covering many aspects of UK oceans and coastal laws. It consolidates existing laws into one Act and is comprised of eight parts:

1. The establishment of the Marine Management Organisation
2. Demarcation of an exclusive economic zone, UK marine area, and Welsh zone⁹
3. Marine planning
4. Marine licensing
5. Nature conservation
6. Management of Inshore Fisheries
7. Fisheries - migratory and freshwater fisheries
8. Enforcement
9. Coastal Access

The *Marine Act* also created the Marine Management Organisation (**MMO**), an executive body under DEFRA charged with carrying out the regulations and orders designed to implement the *Marine Act*. Its responsibilities include:¹⁰

- managing and monitoring fisheries and ensuring compliance with fisheries regulations, such as fishing vessel licensing;
- planning and licensing for certain marine construction, deposits and dredging;
- making marine nature conservation bylaws;
- dealing with marine pollution emergencies, including oil spills; and
- producing marine plans to include all marine activities, including those the MMO does not directly regulate.

Marine Planning

Marine planning is done in accordance with the Marine Policy Statement (**MPS**), which is a high-level policy framework prepared by the relevant environment minister in the United Kingdom, Scotland, Wales, or Northern Ireland with consultation and concurrence by the applicable legislative body in accordance with the *Marine Act*. The MPS includes, amongst other items, promotion of sustainable economic development, and ensuring a sustainable marine environment.

⁸ Ibid s 3.36.

⁹ There are separate marine planning Acts for Scotland and Northern Ireland covering their respective territorial waters, the *Marine (Scotland) Act 2010* and the *Marine (Northern Ireland Act) 2013*.

¹⁰ MMO website at <http://www.gov.uk/government/organisations/marine-management-organisation/about#corporate-info>.

Spatially, the UK is divided into marine planning regions (**MPRs**) with an associated marine planning authority (**MPA**) who prepares a Marine Plan (**MP**) for each area. MPAs also have monitoring and reporting functions. In Scotland, Wales and Northern Ireland the devolved administrations are the planning authorities and in England the MMO is the planning authority.¹¹

Pursuant to the *Marine Act*, both the MPS and resulting Marine Plans generally have the force of law. Any authorisation or enforcement decision by a public authority, which 'relates to the exercise of any function capable of affecting the whole or any part of the UK marine area',¹² must be in accordance with the appropriate marine policy documents.¹³ A public authority may make an authorisation or enforcement decision not in accordance with the appropriate document, but it must state its reasons if it does so.¹⁴ These include decisions made by local Council under the *Planning Act 2008*.¹⁵

Marine Protected Areas

The MPS also commits the UK administrations to complete an 'ecologically coherent' network of Marine Protected Areas (**MPAs**) 'as part of a broad based approach to nature conservation.'¹⁶ This network will include both Marine Conservation Zones (**MCZs**), as provided for in the *Marine Act*, and MPAs under legislation applying to Scottish waters. As of July 2016, fifty MCZs have been designated in English waters by Ministerial order with appropriate consultation.

Marine Licenses

In addition, there is a system of licensing applicable to certain marine activities, including but not limited to some marine construction, dredging, and incineration at sea. This licensing system does not apply to offshore oil and gas activities, including the construction and maintenance of pipelines, for which licenses are required under the *Petroleum Act 1998* and/or the *Petroleum (Production) Act 1934*, and for carbon dioxide storage activities covered by the licensing regime in the *Energy Act 2008*.

¹¹ United Kingdom Government, *Marine plan areas in England* (11 June 2014) <<http://www.gov.uk/government/publications/marine-plan-areas-in-england>>.

¹² Marine Act s 58(3)(a).

¹³ Ibid ss 58(1), 59.

¹⁴ Ibid s 58(2).

¹⁵ Ibid s 58(5).

¹⁶ HM Government, *UK Marine Policy Statement* (2011) 26.