
Evaluation of *Australia's Oceans Policy* as an example of public policy-making in Australia

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Introduction

The incentive for Australia to develop a national oceans policy was greatly enhanced following the declaration by Australia in August 1994 of a 200 nautical mile Exclusive Economic Zone (EEZ), the ratification by Australia in October 1994 of the Law of the Sea Convention (LOSC) 1982 (United Nations 1983), and the entry into force of LOSC on 16 November 1994. As a result Australia acquired the largest exclusive economic zones and continental shelves in the world (Tsamenyi, Bateman, and Delaney 1996 & Tsamenyi and Herriman 1996). It is perhaps surprising Australia did not act more quickly to develop an oceans policy bearing in mind it played such an active and constructive role at the diplomatic level (Bergin 1996) in the negotiations over a ten-year period that resulted in LOSC and created a comprehensive international legal regime for the oceans agreed as a package by more than 150 countries, and the potential opportunity for action during the subsequent twelve-year period before LOSC came into force. However, Australia like most other developed countries played a waiting game, and did not ratify LOSC until its entry into force was imminent. Moreover, it was not until 1994 that the *Agreement Relating to the Implementation of Part XI* effectively amending LOSC was agreed, and this overcame previous reservations in relation to the international legal regime for the exploitation of non-living resources within the Area as prescribed under Part XI of LOSC. Nevertheless, even though Australia was slow to embark on the construction of a national oceans policy, once it did so progress was extremely rapid and

Australia became the first nation to produce a comprehensive oceans policy (Bateman 1999 & Wescott 2000). Indeed, a phenomenally short three-year period elapsed between the announcement in December 1995 by the then Prime Minister, Hon Paul Keating, that Australia had agreed to a proposal to develop a coordinated policy to manage Australia's marine resources, and the release in December 1998 of a comprehensive *Australia's Oceans Policy* by the Federal Minister for the Environment and Heritage, Senator the Hon. Robert Hill (Commonwealth of Australia 1998(b) & (c)).

Ecologically sustainable development

At the core of *Australia's Oceans Policy* is the internationally agreed concept of ecologically sustainable development (ESD) which arose from the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992. This culminated in *Agenda 21*, which included Chapter 17 covering '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', and provided a broad agenda for sustainable development of coastal and ocean environments of the world. Moreover, the concept of ESD is embodied in Australia's *National Strategy for Ecologically Sustainable Development 1992*. Indeed, in his speech to the Environment Australia 1997 Oceans Policy Forum, Senator the Hon. Robert Hill observed that the ecologically sustainable development of the nation's ocean resources both for wealth creation and environmental protection was one

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of the principal reasons the Australian Government was committed to the development of an integrated and comprehensive oceans policy (Wescott 1998). This is particularly appropriate as ESD provides a basis for compromise between the conflicting interests of development and conservation.

The definition of Ecologically Sustainable Development given in *Australia's Oceans Policy* (Commonwealth of Australia 1998(c)) as contained in *Our Sea, Our Future, State of the Marine Environment Report* (SOMER) 1995 is:

Development which meets the needs of the present without compromising the ability of future generations to meet their needs. Development which is compatible with the continuing functioning of essential ecological processes.

Indeed, Australia's *National Strategy for Ecologically Sustainable Development* 1992 has the objectives of enhancing individual and community well-being by following a path of economic development that safeguards the welfare of future generations, provides for equity within and between generations, and protects biological diversity and maintains essential ecological processes and life support systems. Furthermore, the ESD Strategy recognised 'the need for developing a strong, growing and diversified economy that can enhance the capacity for environmental protection' as well as 'the need to maintain and enhance international competitiveness in an environmentally sound manner' (Wolfers and Bateman 2001). This ESD Strategy was a fundamental element in the construction of the national oceans policy for Australia, and the challenges expressed in it are evident throughout the oceans policy document. However, both the definition of ESD and the objectives of the ESD Strategy are easy to articulate, but extremely difficult to properly implement in practice as this requires scientific information for which data is frequently unavailable, and moreover involves complex political issues including those related to Federal-State relations, conflict between conservation and development, and general political decision-making revolving around questions of priority. Furthermore, as observed by Herriman (1996), the words 'ecologically sustainable development' are widely used by

political actors, have become a *policy category* that is generally accepted, and enable debate to 'move on' even though it is a matter of conjecture how much expressions such as ESD really convey or conceal as questioned by Considine (1994). Such practical difficulties are recognised in *Australia's Oceans Policy* that addresses the need for adequate marine scientific research as well as the maintenance of a comprehensive marine scientific database, the facilitation of collaboration and cooperation between the Commonwealth and States, and the need for resolution of conflict that can arise between different sectoral uses of the ocean as discussed subsequently. Thus, while *Australia's Oceans Policy* is appropriately based on the universally accepted concept of ESD, it embraces awareness of the practical problems inherent in the implementation of such a concept, and attempts to address them through the provision of a policy framework and guidelines as well as institutional arrangements.

Large marine ecosystems and regional marine plans

Under *Australia's Oceans Policy* the development of Regional Marine Plans (RMPs) based on Large Marine Ecosystems (LMEs) is the fundamental underlying basis on which the planning, development, and management of Australia's oceans is to take place. This approach is consistent with a recommendation in the report of a working party of the Australian Marine Sciences Association (AMSA) entitled *Toward a National Marine Science Policy* released in 1997. This was that Australian coastal and offshore marine habitats would be most effectively managed as Large Marine Ecosystems with boundaries defined on objective scientific criteria involving regional biographical factors and not historical and political considerations, and operated in a manner somewhat similar to that existing in the Great Barrier Reef Marine Park (GBRMP) described by Kenchington and Crawford (1993). The Regional Marine Plans to be constructed under Australian oceans policy will integrate sectoral commercial interests and conservation requirements (Commonwealth of Australia 1998(b)), and the participation of

relevant States and Territories will be sought by the Commonwealth.

A bold and brave decision in *Australia's Oceans Policy* is that the first Regional Marine Plan to be developed will cover the south-eastern region of Australia's EEZ (Commonwealth of Australia 1998(b)). This RMP embraces a large area of sea off eastern South Australia, Tasmania, Victoria, and southern New South Wales, and includes waters under the jurisdiction of four States as well as the Commonwealth. Moreover, greater than half Australia's population lives on coastal land adjacent to this first RMP, and within the RMP there are major marine industries including tourism, fisheries, aquaculture, offshore petroleum, and maritime transport. Consequently, the first RMP will need to tackle many different issues including those associated with maritime boundaries and different jurisdictions under both constitutional and international law, competing interests of conservation and development, resource allocation and dispute resolution between diverse sectoral interests, international legal implications of coastal activity, and the need for appropriate scientific research and data availability for effective decision-making. The ambitious choice of location for the first RMP should ensure that most issues likely to be encountered in the development of RMPs will arise, and while this will present a real challenge it should also serve as a valuable learning experience and provide lessons for the development of future RMPs.

An important component of *Australia's Oceans Policy* that needs to be taken into account in the construction of RMPs is the requirement to develop a National Representative System of Marine Protected Areas (NRSMPA) with varying degrees of protection as endorsed by Australian governments under the Intergovernmental Agreement on the Environment (Commonwealth of Australia 1998(b)). The establishment of a NRSMPA is consistent with the *National Strategy for Ecologically Sustainable Development* 1992 and the *National Strategy for the Conservation of Australia's Biological Diversity* 1996, and will integrate biodiversity conservation with human activity

based on the principles of ecologically sustainable development and the multiple use of ocean resources.

The successful development of Regional Marine Plans will be determined very much by the effectiveness of RMP Steering Committees (Commonwealth of Australia 1998(b)) comprising both non-government and government stakeholders established to oversee the development of RMPs, and this will depend on their membership composition, ability, dedication, initiative, and time availability as well as on the resources at their disposal. Moreover, there needs to be good collaboration and coordination between the Steering Committees and National Oceans Office that is to provide support, and it is essential that Steering Committee reports to the National Oceans Ministerial Board comprising various relevant Federal Ministers (Commonwealth of Australia 1998(b)) are properly considered and appropriately acted upon. This requires a political commitment by the Board and Federal government as well as the availability of necessary funding for the subsequent implementation of any decisions reached.

The formulation of Regional Marine Plans will need to be based on proper scientific evidence, and some such evidence is currently being gathered in the depths of the ocean off south-eastern Australia by CSIRO Marine for input into the first RMP. Furthermore, appropriate use should be made also of published material already available, and this will be assisted by the Australian Marine Data Inventory (AMIDI) which contains detailed information on the sources of marine data. Moreover, *Australia's Oceans Policy* is complemented by *Australia's Marine Science and Technology Plan* released by the Federal government in 1999 (Commonwealth of Australia 1999) as well as by the *Marine Industry Development Strategy* published in 1997. While recognising that marine scientific research is essential for the successful development of RMPs, it needs to be borne in mind that *Australia's Oceans Policy* is intended to be both comprehensive and integrated, and this will entail also the need for maritime research involving other disciplines including law, economics, sociology, human

resources, public policy, and international relations as advocated by Bateman (1999) together with consideration of their inter-relationships for oceans management to be fully effective.

Background input into Australia's oceans policy

The national oceans policy for Australia released in December 1998 (Commonwealth of Australia 1998(b)&(c)) was not a spontaneous creation that arose in isolation. Indeed, in its construction hard international law such as LOSC and soft international legal provisions such as those in Chapter 17 of *Agenda 21*, Australian national legislation and policy, and intergovernmental agreements between the Commonwealth and States were taken into account in formulating the policy as indicated earlier. Moreover, it could be said that oceans policy in the form of various Federal and State legal provisions related to maritime matters already existed (Herriman 1996), but this did not constitute an oceans policy that was either comprehensive or national. Furthermore, in the construction of the national oceans policy for Australia released in December 1998 a number of different reports and initiatives over the previous decade played an important role in providing input into the policy that finally emerged.

Among such precursors to Australia's oceans policy were two seminal reports by Professor Ken McKinnon, then Vice Chancellor of the University of Wollongong, entitled *Oceans of Wealth?* released in 1989 and *Review of Marine Research Organisations* published in 1993. They respectively highlighted the importance of maritime resources in Australia and catalogued the organisations involved nationally in marine research activity. Other initiatives that assisted the development of an oceans policy for Australia included the *Ocean Rescue 2000* program launched early in the 1990's (Wescott 1998) by the then Federal Department of Environment, Sports and Territories, and one important outcome of this program was the publication in 1995 of the *State of the Marine Environment Report* (SOMER). A significant event held in August 1994 was a seminar organised jointly by the Centre for Maritime

Policy at the University of Wollongong and the Royal Australian Navy that examined in detail the desirability of a national policy for ocean management, and the proceedings of this seminar were published as a monograph entitled *Oceans Management Policy: The Strategic Dimension*. Moreover, an *Ocean Outlook Congress* was convened in Canberra by major Australian marine science organisations on 16 November 1994 to coincide with the day LOSC entered into force, and subsequently a paper entitled *Australia's Ocean Age: Science and Technology for Managing our Ocean Territory* was prepared for the Federal Government by an independent group of marine scientists and industrialists. A major report by the Australian Marine Industries and Sciences Council (AMISC) entitled *Marine Industry Development Strategy* was published by the Federal Department of Industry, Science and Tourism in January 1997, and this highlighted and quantified financially the success achieved by some specific sectors of Australia's marine industry, especially offshore petroleum, shipbuilding, fishing, and marine tourism (Bateman 1999).

Since 1994 when Australia declared a 200-nautical mile EEZ and subsequently ratified LOSC that soon afterwards came into force, there was intense lobbying by Australian marine scientists and maritime industry that prompted the Federal government to focus on the issue of a national oceans policy. Indeed, in December 1995 Prime Minister Keating announced that the government would embark on such a policy. Late in 1996 Federal Cabinet considered an initial Scoping Paper on Oceans Policy, and even though this paper was not publicly released, there was informal awareness that the paper was wide in scope and examined both international and constitutional issues as well as the need for and scope of an oceans policy (Wolfers and Bateman 2001). The goal of such a policy was identified as 'the promotion of ecologically sustainable use of Australia's oceans' with the object of 'providing a clear strategic framework in which to plan, develop and manage our oceans'.

In March 1997 an *Oceans Policy Consultation Paper* was released by the Howard

Commonwealth Government, and this reflected a sound balance between conservation interests of preserving and protecting the marine environment and development interests aimed at wealth generation and job creation (Wolfers and Bateman 2001). Nevertheless, the report focused much more on Australia's interests in the exclusive economic zone than those within the continental shelf and high seas which were largely neglected. During the subsequent year or so a considerable amount of further work including research, consultation and discussion took place, and in May 1998 the Commonwealth government released *Australia's Oceans Policy – An Issues Paper* (Commonwealth of Australia 1998(a)) that was extremely detailed. However, the paper did not address the question of organisational structure that would need to be established for the planning and management of Australia's oceans as that remained a controversial issue (Wescott 1998). In addition to the major Issues Paper released in May 1998, seven separate Issues Papers and four Background Papers were also prepared. Indeed, a succession of reports, activities, and issues papers spread over the previous ten-year period played a substantial formative role in the evolution of an oceans policy for Australia.

Scope of Australia's oceans policy

In December 1998 the Federal Government released *Australia's Oceans Policy* that comprised two parts contained in separate volumes (Commonwealth of Australia 1998(b)&(c)), and had as its *vision*:

Healthy oceans: cared for, understood and used wisely for the benefit of all, now and in the future

as stated and highlighted at the front of the first part of the policy document following an introductory message from the Prime Minister (John Howard), an executive summary, and a foreword by the Minister for the Environment and Heritage (Senator Robert Hill). In addition to the *vision* for Australia's oceans nine broad *goals* are also listed and highlighted on the same page as means for achieving the *vision*. These *goals* relate to the exercise and protection of Australia's rights and jurisdiction over ocean space, the meeting of Australia's international obligations, the understanding and protection of Australia's marine biological diversity and

ocean environment, the promotion of ecologically sustainable economic development and job creation, the establishment of integrated oceans planning and management, the accommodation of community needs and aspirations, the improvement of expertise and capability in ocean-related matters, the identification and protection of natural and cultural marine heritage, and the promotion of public awareness and understanding. These goals indicate that the oceans policy for Australia that finally emerged is comprehensive in scope and intended to be integrated as originally proposed.

The substantive content of the first part of *Australia's Oceans Policy* (Commonwealth of Australia 1998(b)) comprises seven major sections which deal with:

1. The marine jurisdictional, environmental, industrial, indigenous, and international context for Australia's oceans policy;
2. Integrated and ecosystem-based oceans planning and management, including Regional Marine Planning;
3. Implementation arrangements for planning and management of the oceans, including proposals for Commonwealth-State co-operation;
4. Principles for ecologically sustainable use of the oceans;
5. Key initial actions required for implementing the oceans policy, including the provision of \$50 million funding over a three-year period and the assessment of effectiveness;
6. Marine science, technology, and industry, in particular the *Marine Science and Technology Plan* and the *Marine Industry Development Strategy*; and
7. Next steps for Australia's oceans policy comprising a proposed timetable of events until mid-2000 for its effective implementation.

These seven major sections are followed by four appendices on:

1. Policy guidance for oceans planning and management, including application of the

- precautionary principle, use of economic instruments, and the need for reporting, monitoring and assessment;
2. A description of the legal and constitutional framework for Australia's marine areas, including the Offshore Constitutional Settlement;
 3. Explanation of ecosystem integrity and multiple ocean uses; and
 4. Background on the National Representative System of Marine Protected Areas as well as ecosystem-based regionalisation of Australia's oceans.

The detailed content of the first part of *Australia's Oceans Policy* demonstrates further the comprehensiveness of the policy as well as the intention for it to be integrated.

The second part of *Australia's Oceans Policy* (Commonwealth of Australia 1998(c)) is devoted entirely to specific sectoral measures, and contains six sections of which section (2) dealing with ocean uses and impacts is by far the largest. Indeed, this section extends over twenty pages, and occupies almost half this second volume of the policy. The twelve diverse interests covered in this section comprise essentially (although not in the same order) fisheries, aquaculture, offshore petroleum and minerals, maritime transport, marine industry, tourism, biotechnology, and alternative energy as well as the conservation of marine biological diversity, pollution prevention, indigenous interests, and maritime heritage. For the various sectoral activities specific policy measures are prescribed such as those related to bycatch in the case of the fishing industry, and those concerning ballast water as a source of harmful marine pests in the case of the shipping industry. The five other shorter sections comprise (1) an introduction; (3) community participation; (4) understanding the oceans, including physical, chemical and geological attributes, marine biological diversity and ecosystem processes, information required for management and monitoring, weather and climate services, and climate change; (5) protection of national interests, including matters related to defence, international regimes, surveillance and

enforcement; and (6) assessment of effectiveness through performance measurement and reporting. Each of sections (2)-(6) of part two of *Australia's Oceans Policy* enunciates a *challenge*, provides *background* information, and prescribes a *response* on the part of the Federal Government, and these sections include considerable detail that reinforces the comprehensiveness of Australia's oceans policy. Moreover, there is clear specification of the policy directions proposed for each of the diverse ocean activities encompassed by the policy consistent with the subtitle to part two of the policy statement, namely *Specific Sectoral Measures*.

National oceans policy under federal system of government

The formulation of a national oceans policy for Australia is made more difficult by the splitting of powers between the Commonwealth and State governments which exists under the federal system of government. In 1901 Australia became a federation with powers divided between the Commonwealth and State governments as prescribed in the Australian Constitution. Under this specific powers are allocated to the Commonwealth while residual powers remain with the States which had enjoyed exclusive power prior to federation. The powers vested in the Commonwealth government include the authority to negotiate treaties with other countries, and where there is conflict between such a treaty and State law, the law of the Commonwealth embodying the international treaty prevails and this results in what is referred to as the external affairs power of the Commonwealth. Indeed, individual State, Territory, and Local Authority governments are not entities recognised under international law, and the Commonwealth government is the responsible party in any international treaties involving Australia.

In consequence of the federal system of government prevailing in Australia, jurisdiction over ocean space is divided between the Commonwealth and States so that many different sets of laws covering various aspects and diverse sectors of ocean governance apply at each State as well as the Federal level. This gives rise to inconsistencies and even conflict

which makes difficult the construction and even more so the implementation of an integrated and comprehensive oceans policy for Australia requiring harmonisation of maritime affairs with consistency across maritime boundaries. Moreover, a national oceans policy involves international aspects, and these are complicated by the federal system of government in operation in Australia. By way of illustration, under LOSC Australia has international obligations to prevent, reduce, and control land-based marine pollution. Such pollution originates largely from the coastal zone controlled by State and Local governments that are not only keen to see development take place, but wish to ensure that development is supported by conditions competitive with and no more restrictive than those in other States, even though the inevitable outcome of development is land-based marine pollution for which the Commonwealth government has responsibility under international law.

Historically, coastal waters extending for three nautical miles seaward of the baseline from which the width of the territorial sea is measured were regarded as being under State jurisdiction. However, this was denied by the Commonwealth in a challenge by the States to the constitutionality of the provisions of the *Seas and Submerged Lands Act* 1973 that had recently been enacted by the Federal Government. It was held by the High Court in 1975 that Commonwealth jurisdiction over the sea extended from the low water mark so the traditionally held State jurisdiction over the three-nautical mile territorial sea did not apply (Wolfers and Bateman 2001). Nevertheless, certain historic harbours, gulfs, and bays such as the Gulfs of Spencer and St Vincent in South Australia and Sydney Harbour in New South Wales remained inland waters under complete State jurisdiction. Furthermore, following the 1975 High Court decision an Offshore Constitutional Settlement (OCS) was negotiated between the Commonwealth and State governments, and this provided for State jurisdiction over Coastal Waters comprising the traditional three-nautical mile territorial sea, but stipulated that this coastal jurisdiction would not be extended beyond three nautical miles if the width of the territorial sea was increased

subsequently to twelve nautical miles as in fact happened.

In its totality the Offshore Constitutional Settlement comprises a series of ongoing arrangements between the Commonwealth and States (Commonwealth of Australia 1998(b)). The jurisdictional division between them has been complicated by special arrangements that apply to the management of specific sectors involved in ocean use, such as fisheries for which some species are managed by the States and others by the Commonwealth (Palmer 1995). Offshore petroleum exploration is conducted by the States on behalf of the Commonwealth through Designated Authorities supported by technical advice from the Australian Geological Survey Organisation (Wolfers and Bateman 2001). Such arrangements need to be considered in national oceans management, and for this to be effective there has to be continuing collaboration and coordination between the Commonwealth and States that under *Australia's Oceans Policy* is to be achieved through the Australian and New Zealand Environment and Conservation Council (ANZECC) while relevant issues covering specific sectoral interests will be addressed also at Ministerial Council meetings (Commonwealth of Australia 1998(b) & (c)).

Naturally, the successful implementation of a national oceans policy for Australia will depend very much on the effectiveness of the mechanisms established for achieving the necessary cooperation and coordination between the Commonwealth and States, and this will depend also on the degree of political commitment on the part of all governments for this to happen. Moreover, cooperation on ocean affairs between Commonwealth, State, and Territory governments is made more difficult by the large number of government departments and agencies involved in covering the numerous State as well as Federal jurisdictions and sectoral activities, the diversity and complexity of the issues encountered, and the potential for conflict between governments and even between departments within the same government. Nevertheless, effective cooperation is essential to properly achieve the aims of an integrated and comprehensive national oceans

policy for Australia, and to fulfil the caring, understanding, and wise use adopted as the vision for *Australia's Oceans Policy*. Indeed, for the oceans policy to be truly *national* it has to be embraced by all governments, State and Federal. However, while the policy will be followed by all Commonwealth departments and agencies even though not legally binding, it has only persuasive influence on the States. Consequently, it needs to be asked what incentive there is for the States to comply, and if they do what price or concessions will be demanded from the Commonwealth in return.

Development of constituency and bipartisan political support

Traditionally, Australia has been a terrestrially orientated country whose prosperity has depended largely on land-based mining and agricultural activities. Even though a large proportion of Australia's population is located in a coastal environment, the interest of most Australians in the marine environment has extended little beyond the use of the sea for recreational purposes such as bathing, boating, and fishing. However, in more recent years there has been increased awareness of the significance of the maritime environment through developments involving marine tourism as in the Great Barrier Reef, offshore petroleum exploration and production in Bass Strait and on the Northwest Shelf, and a successful shipbuilding industry constructing high-speed commercial catamarans. Moreover, there has been growing concern of the dangers to wild life and the coastal environment generally from shipping disasters such as that of the *Exxon Valdez* in Alaska, and in Australian waters those of the *Kirki* and *Sanko Harvest* off Western Australia and the *Iron Baron* off northern Tasmania. Furthermore, the significance in terms of maritime jurisdiction of the ratification by Australia of LOSC and its coming into force in 1994 became more widely appreciated by the Australian community generally as the result of journalistic activity such as that of the article entitled *Arise Australia the Eco Superpower* published by Sheehan (1995) in the *Sydney Morning Herald*. Even more recently the economic significance and potential of Australia's maritime industries was highlighted

in the *Marine Industry Development Strategy* that was released by the Federal government in 1997 and quantified financially the success of Australia's maritime industry, especially offshore oil and gas production, the export-oriented shipbuilding industry, wild capture fisheries, and marine tourism (Bateman 1999).

In order to encourage community participation in the development of an oceans policy for Australia, the Prime Minister (John Howard) launched a 'consultation paper' on Australia's Oceans Policy in March 1997 (Wescott 2000), and the government took other actions also to stimulate response to this paper. These included a request to the Marine and Coastal Community Network (MCCN) sponsored originally under the Ocean Rescue 2000 program to use its resources and participating membership of almost 7000 to enlighten the Australian community regarding oceans policy development. Moreover, in order to allay criticism that oceans policy development had been dominated by the Federal bureaucracy to the exclusion of the community generally, a phenomenon known as *democratic deficit*, the Minister for the Environment (Senator Robert Hill) in September 1997 announced the proposed establishment of a Ministerial Advisory Group on Oceans Policy (MAGOP) comprising members from non-government organisations (NGOs) to provide advice to the government on the preparation of oceans policy. These actions by the government together with an increase in community awareness generally contributed to the development of a constituency that was an important ingredient for the successful construction of an oceans policy for Australia.

Another important factor that contributed to the development of an Australian oceans policy was the bipartisan support for such a policy by the two major political parties involved in the 1996 Federal election campaign (Wescott 1998), and this bipartisanship augured well for the future of an oceans policy whatever the outcome of the 1996 election. Indeed, even though it was a Labour government that in December 1995 announced the intention to develop a coordinated national policy for the management of Australia's maritime resources, it was the Liberal National Party coalition government

that came to power in May 1996 that pursued the development of an oceans policy for Australia and this culminated in the release in December 1998 of *Australia's Oceans Policy* (Commonwealth of Australia 1998(b)&(c))

Influence of pressure groups in development of oceans policy

Reference was made earlier to the role of marine scientists and maritime industry in lobbying government to develop a national oceans policy, and this pressure came largely from those associated with fisheries and oceanography. Pressure group activity frequently originates also from conflict of interest situations such as that between recreational and professional fishing groups, and more recently from indigenous fishing interests. It could even be said perhaps that the Royal Australian Navy acted as a pressure group to gain potential exemption on the pretext of operational requirements from the forthcoming ban on the use of Tributyltin (TBT) as an antifouling paint on ships. However, the most dominant source of pressure group activity is that arising from the disparate interests of conservation on the one hand and development on the other, although a potential bridge between these conflicting interests is provided by acceptance of the principle of ecologically sustainable development adopted in *Australia's Oceans Policy* (Commonwealth of Australia 1998(b)).

The role of ecologically sustainable development in bringing compromise between conservation and development is evident throughout *Australia's Oceans Policy*, and in particular in the consideration of specific sectoral measures. This is illustrated, for instance, in the *challenge* enunciated in the oceans policy for various sectoral activities such as fisheries and marine tourism as well as conservation of marine biological diversity. Indeed, the *challenge* for conservation of marine biological diversity is:

To ensure the integrity of Australia's ocean ecosystems, the protection of marine biological diversity and provide a resource base for internationally competitive and ecologically sustainable ocean uses.

(*Australia's Oceans Policy*, part 2, page 7);

while that for fisheries is:

To ensure ecologically sustainable fisheries that contribute to the social, cultural, environmental and economic well-being of Australians.

(*Australia's Oceans Policy*, part 2, page 9);

and that for marine tourism:

To create a business and regulatory environment to support a diverse and ecologically sustainable marine tourism sector that maintains the environmental quality on which it depends.

(*Australia's Oceans Policy*, part 2, page 19).

These challenges along with others in *Australia's Oceans Policy* express a good balance between the interests of conservation and development on the basis of ecological sustainability. This conclusion appears consistent with that of Bateman (1999) in which it is reported also that two peak maritime industry groups on the Ministerial Advisory Group on Oceans Policy (MAGOP) representing the shipping industry and port authorities, namely the Australian Shipowners Association and the Association of Australian Port and Marine Authorities, seemed reasonably happy with the outcome of oceans policy development. Indeed, such response tends to allay fears originally held by some that an oceans policy developed in the Federal Ministry for the Environment would have an excessively 'green' bias, and it seems the policy has achieved an appropriate balance between the interests of conservation and development.

International legal regime for oceans

In Australia's oceans policy there is recognition of jurisdictional issues associated with various maritime zones prescribed under international law and declared by Australia in the *Seas and Submerged Lands Act* 1973. These zones comprise the *territorial sea* that extends for twelve nautical miles seaward of the baseline. In this zone Australia has sovereignty and the right to impose comprehensive control subject to the right of innocent passage of foreign ships (Commonwealth of Australia 1998(b)). However, as discussed earlier, the Offshore Constitutional Settlement (OCS) agreed between the Commonwealth and States gives the States primary responsibility over *coastal waters* extending for three nautical miles from the baseline. Furthermore, the States have always had control over inland waters that

include historic harbours, gulfs, and bays. Beyond the territorial sea there is a *contiguous zone* extending to twenty-four nautical miles seaward of the baseline, and in this zone Australia has limited rights of enforcement involving customs, fiscal, sanitary, and immigration matters.

The *Exclusive Economic Zone* (EEZ) is located between 12 and 200 nautical miles seaward of the territorial sea baseline, and in this zone Australia has sovereign rights to explore and exploit the living and non-living resources of the ocean, seabed and subsoil (except sedentary species) subject to the obligation to protect and conserve the marine environment. The *continental shelf* extends also to 200 nautical miles from the baseline and is claimable up to 350 nautical miles from the baseline subject to the establishment of certain physical conditions that are currently being investigated using marine scientific research conducted by the Australian Geological Survey Organisation with the aim of optimising Australia's claim to an extended continental shelf. In this zone Australia has sovereign rights to explore and exploit the resources of the shelf beneath the ocean together with sedentary species on the seabed. Beyond the Exclusive Economic Zone are the *high seas* that are regarded as the common heritage of mankind, and in this zone Australia is subject to LOSC as well as various other international treaty obligations related to fishing, shipping, and other matters.

In a speech to the Environment Australia 1997 Oceans Policy Forum, Senator Robert Hill described the assertion by Australia of sovereign rights over its Exclusive Economic Zone as one of the principal reasons for the government being committed to an integrated and comprehensive oceans policy (Wescott 1998). Such rights include not only traditional defence against attack, but also the detection and prevention of illegal fishing, unlawful immigration, and drug trafficking within the EEZ. This is achieved through surveillance and enforcement activities carried out by the Australian Defence Force coordinated by Coastwatch and supported by fisheries, immigration, customs, and quarantine agencies

(Commonwealth of Australia 1998(c)). However, as recognised in the oceans policy, Australia has both rights and responsibilities in the maritime environment under LOSC (Tsamenyi and Herriman 1996). Indeed, while Australia has sovereign rights over fisheries resources within its EEZ covering an area of almost nine million square kilometres (Tsamenyi and Aqorau 1996), it has obligations also under LOSC to conserve the living resources of the EEZ, to determine their optimum utilisation, and to protect and preserve the marine environment. Moreover, there is the obligation to carry out marine scientific research in order to effectively fulfil these responsibilities.

There is proper recognition also in Australia's oceans policy that the effects of activities in the seas or on adjacent coastal land of one country can affect the seas and coast of another country, and there is acknowledgment in the policy of a general need for regional cooperation on maritime matters. Indeed, Australia has maritime boundaries with six other countries, namely Indonesia, East Timor, Papua New Guinea, Solomon Islands, New Zealand, and French territories within the tropics and sub-Antarctic, and there is cooperation between Australia and adjoining countries on matters such as joint defence as well as search and rescue. Furthermore, there is recognition in the oceans policy of Australia's involvement as a party in a range of international agreements involving maritime affairs. Such agreements include for fisheries the 1995 *United Nations Agreement Related to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* as well as the *Convention for the Conservation of Southern Bluefin Tuna*, while in the case of shipping there are various Conventions of the International Maritime Organisation (IMO) including the *International Convention for the Safety of Life at Sea* (SOLAS) 1974 and the *International Convention for the Prevention of Pollution from Ships* (MARPOL) 1973 and its Protocol of 1978.

Even though Australia's oceans policy appears to provide an essentially satisfactory offshore legal regime for the planning and management

of Australia's oceans, a more detailed analysis shows that implementation of the policy requires some adjustments to the legal regime (Rothwell and Kaye 2000). This is illustrated by the enactment of the *Fisheries Legislation Amendment Act (No 1)* 1999 and the *Border Protection Legislation Amendment Act* 1999 that give effect to the commitment in Australia's oceans policy for enhanced surveillance and enforcement, and put in place a more comprehensive legal regime for the contiguous zone.

Implementation arrangements and monitoring

An important matter not addressed in the Issues Paper for Australia's Oceans Policy circulated in May 1998 was the nature of the institutional arrangements that would be required for the implementation of an oceans policy for Australia (Wescott 1998 & 2000). This omission from the discussion paper reflected the controversy between development and conservation interests as to whether new legislation would be needed to reinforce the institutional arrangements adopted in order to achieve effective implementation of an integrated oceans policy. Indeed, this issue continues to be the subject of controversy in the ongoing implementation of oceans policy, and unless a cooperative approach is successful it will be necessary for the Federal government to introduce legislation as favoured by conservation interests to ensure that integration takes place in practice.

Independent of the question of whether such legislation is required, it is clear there needed to be a mechanism in terms of organisational structure for any attempted implementation of an oceans policy for Australia, and in *Australia's Oceans Policy* (Commonwealth of Australia 1998(b)) released in December 1998 an organisational structure for implementation is specified. This is headed by a National Oceans Ministerial Board (NOMB) composed of the Federal Ministers responsible for the environment (the Chair), industry, resources, fisheries, science, tourism, and shipping, while other Ministers such as those for defence and foreign affairs can be co-opted as appropriate. Moreover, as discussed previously, coordination

between the Commonwealth and States is to be achieved at ministerial level primarily through ANZECC although relevant Ministerial Council meetings will also play a role. The Ministerial Board is supported by a National Oceans Advisory Group (NOAG) comprised of persons selected for their expertise in ocean matters, and drawn largely from non-government interests such as industry, science, and conservation. Regional Marine Plan Steering Committees composed of both non-government and government stakeholders are involved in the development of Regional Marine Plans in close consultation with a National Oceans Office (NOO) and report to the Board as discussed earlier. The National Oceans Office located in Hobart gives support to the Ministerial Board, Advisory Group, and Regional Steering Committees. Moreover, it functions as the secretariat for Australia's oceans policy and contributes technical support as well as program delivery. Clearly, the success of Australia's oceans policy will depend very much on the commitment and effectiveness of those involved in this organisational structure, including the linkages between its various components, put in place for the implementation of the policy.

Another important feature of Australia's oceans policy is its recognition of the need for evaluation and the achievement of effectiveness. This includes the identification and rectification of factors adversely affecting proper implementation of the policy, and this requires the development and use of objective criteria for monitoring, assessing, and reporting on the effectiveness of the policy. If properly carried out, such monitoring should ensure that Australia's oceans policy is more than just a statement of intent.

The approach to oceans governance adopted by Australia is that of providing a *policy-based* framework (Bache, Tsamenyi, and Baldwin 2000) in which existing sectoral, legislative, and administrative arrangements remain in place, an attempt is made to integrate the various sectoral objectives and strategies by means of a regional marine planning process with common goals and principles being applied nationally in each sector. This is in contrast to a *legislative-based*

approach that has at its core a statutory framework for the development of a system of national oceans governance as adopted by Canada through the *Canada Oceans Act 1997* and by the United States through *Oceans Act 2000*. It can be expected that the outcome of these two different approaches to oceans governance will be watched with interest by other countries wishing to develop a national system for the integrated exploitation as well as protection of the ocean environment within their jurisdiction.

Conclusions

In the Federal election campaign conducted early in 1996 both major political parties in Australia were committed to the development of a national oceans policy, and during the following two years or so an oceans policy for Australia was constructed with phenomenal rapidity assisted by considerable background input of various kinds already available. *Australia's Oceans Policy* released in December 1998 is comprehensive, and by its adoption of the guiding principle of ecologically sustainable development achieved a good balance between conservation and development. The policy is intended also to be integrated, but whether this is realised in practice will depend on successful cooperation and coordination between the Federal and State governments as well as between diverse sectoral interests. This will depend in turn on the effectiveness of the implementation mechanisms established in the policy for Federal-State cooperation as well as for the overall implementation of the policy. This in turn will depend on the extent of political commitment by both the Federal government and State governments for it to succeed. Moreover, at the core of the policy is sustainable development through regional marine planning based on large marine ecosystems, and the success in achieving this will depend very much on the availability as well as proper assessment of adequate marine scientific data, and on the effectiveness of the contributions made by the various steering committees involved in the regional marine planning and management process.

Ultimately, the test of success of Australia's oceans policy will be whether it achieves

harmonious development between diverse sectoral activities and across different maritime jurisdictions, the avoidance of serious adverse environmental impacts, and the realisation of ecologically sustainable development on a national basis. It is possible that pressure from well organised sectoral interests coupled with desire of the States for competitive development and income generation could win out against the policy aims of sustainable development and harmonious multiple use of the oceans. This will depend to a considerable extent on the strength of the constituency for the achievement of a successful oceans policy outcome together with an associated determination on the part of the Federal Government to bring about the practical implementation of a truly national oceans policy. Indeed, while the policy adopted by the Federal Government for Australia's oceans is certainly comprehensive, much needs to be done to ensure that it is properly integrated and effectively implemented.

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REFERENCES

- Bache, S., Tsamenyi, M., and Baldwin, C. (2000), *Current Developments in Integrated Oceans Management & Governance in APEC Member Economies*, Input inventory document for the MRC Working Group Workshop on Integrated Oceans Management to be held in Vancouver, December 12-15, 2000, Centre for Maritime Policy, University of Wollongong (Unpubl).
- Bateman, S. (1999), 'Australia's Oceans Policy and the Maritime Community', *Maritime Studies*, no 108, September/October 1999, pp. 10-17.
- Bergin, A. (1996), 'Australia's Contribution to the Convention', *United Nations Convention on the Law of the Sea: What it means to Australia and Australia's Marine Industries*, Wollongong Papers on Maritime Policy no 3, Centre for Maritime Policy, University of Wollongong, pp. 17-41.
- Commonwealth of Australia (1998(a)), *Australia's Oceans Policy – An Issues Paper*, Environment Australia, Canberra, May 1998.

- Commonwealth of Australia (1998(b)), *Australia's Oceans Policy*, Environment Australia, Canberra.
- Commonwealth of Australia (1998(c)), *Australia's Oceans Policy – Specific Sectoral Measures*, Environment Australia, Canberra.
- Commonwealth of Australia (1999), *Australia's Marine Science and Technology Plan*, Department of Industry, Science and Resources, Canberra.
- Considine, M. (1994), 'Introduction and Overview', Chapter 1, *Public Policy: A Critical Approach*, Macmillan, Melbourne, pp. 1-21.
- Herriman, M. (1996), 'Public Policy Aspects of the Development of National Oceans Policy?', *Maritime Studies*, no. 91, November/December 1996, pp. 10-15.
- Kenchington, R. and Crawford, D. (1993), 'On the Meaning of Integration in Coastal Zone Management', *Ocean and Coastal Management*, no. 21, pp. 109-127.
- Palmer, B. (1995), 'Commonwealth Fisheries Law and Issues', *Australian Fisheries Management Authority*, Canberra (Unpubl).
- Rothwell, D. and Kaye, S. (2000), *Australia's Legal Framework for Integrated Oceans and Coastal Management* (Unpubl).
- Sheehan, P. (1995), 'Arise Australia the Eco Superpower', *The Sydney Morning Herald*, 12 August 1995.
- Tsamenyi, M. and Aqorau, T. (1996), 'Fishing Rights and Responsibilities at Sea: Analysis of Relevant Provisions of the United Nations Convention on the Law of the Sea', *Rights and Responsibilities in the Maritime Environment: National and International Dilemmas*, Wollongong Papers on Maritime Policy no. 5, Centre for Maritime Policy, University of Wollongong, pp. 67-81.
- Tsamenyi, M., Bateman, S., and Delaney, J. (eds) (1996), *The United Nations Convention on the Law of the Sea: What it means to Australia and Australia's Marine Industries*, Wollongong Papers on Maritime Policy no. 3, Centre for Maritime Policy, University of Wollongong.
- Tsamenyi, M. and Herriman, M. (eds) (1996), *Rights and Responsibilities in the Maritime Environment: National and International Dilemmas*, Wollongong Papers on Maritime Policy no. 5, Centre for Maritime Policy, University of Wollongong.
- United Nations (1983), *United Nations Convention on the Law of the Sea with Index and Final Act of the Third UN Conference on the Law of the Sea*, United Nations, New York.
- Wescott, G. (1998), 'The development of Australia's 'integrated and comprehensive' ocean policy', *Preservation and Protection of the Marine Environment Conference*, University of Wollongong, October 1998, and submitted for publication to *Marine Policy*.
- Wescott, G. (2000), 'The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy', *Ocean and Coastal Management*, no. 43, pp. 853-878.
- Wolfers, E. and Bateman, S. (2001), *Study Guide – National Dimensions of Maritime Policy*, The Postgraduate Program in Maritime Policy, Faculty of Arts – History and Politics Program, University of Wollongong (Unpubl).

