

Public Policy Aspects of the Development of National Oceans Policy?

Max Herriman*

*'Policy formulation and implementation is a dynamic system, without necessary start or finish, imbued with a tendency to chaos as simple initial conditions produce complex and unpredictable patterns. That is its frustration and its fascination.'*¹

On 8 December 1995, Prime Minister Keating announced that the Commonwealth had agreed to a proposal for the development of a co-ordinated policy on the management of Australia's marine resource. A press release announcing the initiative stated that: '(t)he overall goal of the policy should be to provide the vision that will promote the efficient, sustainable use of Australia's marine resources in the (exclusive economic zone) while conserving the biological base of those resources.'² A change of government in the Federal election of 2 March 1996 seemed to slow progress on development of the national oceans policy, but the incoming government affirmed its intention to continue the process and, on 6 June 1996, Prime Minister Howard wrote to the Minister for Environment, Sport and Territories asking him to take a co-ordinating role in development of an oceans policy. The Oceans Inter-Departmental Committee (IDC) has progressed work on the structure of an oceans policy, and the matter is likely to be considered by Federal Cabinet before the end of 1996.

However, to some extent Australia already *has* a national oceans policy that can be observed through analysis *inter alia* of government and private-sector marine activities, legislation, government institutional arrangements and financial allocations, marine development programs, academic discussion and research, the statements and activities of non-government organisations, and public statements by

government officials. Identification of weaknesses in oceans policy, such as fragmented, sectoral management, lack of anticipatory conflict resolution, inadequate knowledge or research effort, or unproductive inter-governmental rivalry, and so on, does not in itself undermine the proposition that Australia does already have an oceans policy.³

For many years, repeated calls for an Australian national oceans policy did not succeed in prompting government to promulgate a comprehensive oceans policy. Australia has not been alone in this regard – a 1992 estimate concluded that a majority of nations had *not* articulated a national oceans policy.⁴ However, discussion of the need for a national oceans policy – generally overseas – has lacked sophistication. Indeed, it has been argued to have remained at a 'primitive' level.⁵ Two weaknesses of the debate have been a proclivity to identify policy formulation as an activity undertaken only by elites such as politicians, bureaucrats, and lawyers, and an implied suggestion that oceans policy should be developed against a rational, utopian standard that insufficiently recognises the complexity of policy systems.⁶

Inadequacies in the current process serve to demonstrate that public policy is a continuous process and not an achievable state. Public policy can be accepted as '... the continuing work done by groups of policy actors who use available public institutions to articulate and express the things they value.'⁷ Public policy is always the expression of government authority but it is so only as an expression that represents the inputs of 'policy actors' who have been defined as 'any individual or group able to take

* Naval Fellow, Centre for Maritime Policy, University of Wollongong

action on a public problem or issue.⁹ Importantly, Considine notes '(g)overnments do not start and stop a commitment to a policy area; rather, they modify, prune and adjust.'⁹

The viewpoint that argues public policy to be simply the stated intentions or observable actions of government is overly narrow. Davis et al. note that '... politicians and bureaucrats use the term "public policy" without irony or uncertainty. For them, it means simply the decisions of government'.¹⁰ If public policy is understood to be only the official description of governmental activity and intentions in a particular policy realm, a definitive national oceans policy could not be said to exist in Australia. But such a constrained definition leaves open the question of how government decisions are to be observed. For example, what is the accepted public policy if formally declared governmental policy seems to be at variance with legislation or administrative interpretation?¹¹ How also is policy to be understood if there has been no declared intentions but a program of activity is apparent, or in the event that outcomes appear to be the purposive result of *inaction*? A limited approach to oceans policy development that equates policy with a stated government position risks overlooking the continuous nature of public policy and the important role played by policy actors in both the public and private sectors. Corollaries of such misunderstanding might be the mistaken belief that a national oceans policy can be *achieved* simply through formal articulation of government intentions, and disillusionment upon realisation that unrealistically 'rational' policy objectives are unattainable.

Considine argues that public policy is a continuous activity that takes place in a social context with participants that include both public-sector elites and others.¹² However, Davis et al. complement this perspective with an appreciation that public policy is also essentially concerned with the distribution of resources:

At its broadest level ... public policy is the complex interplay of values, interests and resources. Policies express values, support or

curtail interests and distribute resources. They shape, and are shaped by, the constituent elements of politics, so that policies represent victories or compromises encapsulated as programs for action by government.¹³

A strength of this understanding of the allocation of resources within a policy system is that it acknowledges resource distribution as the outcome of more than a dispassionate cost/benefit comparison. It recognises the role of political expediency and suggests a degree of diversity in values and interests that distances the complex functioning of public policy from the prosaic simplicity of 'public choice theory'.¹⁴ Acceptance of public policy as a process that takes place in a world of human imperfection and inconsistency discredits arguments that favour overly 'rational' and idealistic mechanisms and goals for a national ocean policy.

Kenchington and Crawford, purportedly to avoid unrealistic rigidity of policy, advocate 'flexibility of discretionary decisions' in a system of integrated management of coastal and ocean resources.¹⁵ They recognise that '(n)ew information, changing conditions, ideas and priorities change the policies and programs of all levels of government and the international community'.¹⁶ However, they emphasise that management flexibility must avoid 'incremental opportunism' and should therefore occur in the context of 'a dynamic goal' and remain consistent with the objectives of 'the overarching purpose'.¹⁷ Thus, they propose a hierarchical policy system of a goal, objectives and strategies which should be supported by 'Clear, legally based identification of authority, precedence and accountability ...'.¹⁸ This is said to be necessary because '(t)he basis of policy is *to establish a common purpose* through a vision and objectives which must be achieved in order to realise that common purpose' (emphasis added).¹⁹

Kenchington and Crawford's methodology meets the requirements for any sound plan, but policy is not a plan. Who would determine 'the *dynamic goal*'? What is a 'dynamic' goal? How would it be identified, selected, and agreed upon? Their argument implies that public policy

is primarily an elite management activity. Although they acknowledge the changing nature of policy, there is a rigid 'top-down' approach that implies a level of control and constraint that would most likely defy attempts at implementation over the vast distances and multiple uses of Australia's ocean regions. In a federal system such as Australia, with jurisdictional delineation of ocean areas between Commonwealth and State governments, and a crucial role played by local councils in the coastal region, such a rationally devised 'policy' based upon 'the established common purpose' is even difficult to envisage. At the Federal level alone there are about twelve ministers with significant policy responsibilities in the marine field, including: Environment; Primary Industry and Energy; Transport; Industry, Science and Technology; Foreign Affairs and Trade; Attorney-General's; and Defence.²⁰ Any attempt to set in place institutional arrangements and a legal regime based on overly narrow understanding of policy would potentially lead to disillusionment as 'the goal' proved illusory, multi-dimensional, contradictory, and *dynamic* indeed. Public policy cannot profitably be accorded the rigidity of a plan, or even the constraints of a more flexible strategy, without abandoning the elements of participation and evolutionary change which are the essence of the policy process. Importantly, it is the word *process* that best captures the nature of public policy and enables a clear distinction to be drawn between policy and planning.

Public policy entails aspects other than a simple description of the activities presently recognised as legitimate by government. Even the structure of government institutions, the distribution of power between policy actors, and the political-economic arrangements that support a particular set of outcomes in a policy system do not fully explain the workings of that public policy. The values held by policy actors and the priorities accorded to those values are a vital factor in analysis of public policy. Fischer suggests that 'Public policies are essentially political agreements designed for the practical world of social action where facts and values

are intrinsically woven.'²¹ Values and priorities form the foundation of a *policy culture*.

Although they are not always explicitly stated, the values held by policy actors influence the assumptions inherent in many of the arguments advanced in support of interests. In doing so, they also determine the categories accepted by policy actors and the language and stories that are used within a particular policy system.²² Considine succinctly summarises the importance of categories and language to policy culture:

Categories are the necessary shorthand enabling all those working in the same field to conquer uncertainty. Classifications such as 'the poor', 'the disabled' and 'ethnic communities' achieve a common meaning among those within the policy system, allowing them to move on to questions of strategy or preferred outcomes... Jargon, vogue terminology and favourite expressions are the hallmark of any policy language. How much these habits of expression convey and how much they conceal is a matter for investigation.²³

A useful example in the Australian ocean-policy system that illustrates the significance of shared policy language might be the term 'ecologically sustainable development'. The words 'ecologically sustainable development' (ESD) have wide currency and an understood meaning for policy actors.²⁴ ESD has become a *policy category* that is generally accepted; it allows debate to 'move on' in the manner suggested above. Consequently, in February 1995, the Commonwealth Government released a *State of the Marine Environment Report* as part of a program called 'Ocean Rescue 2000'. The report lists ESD as an internationally recognised foundation for future ocean use. The Government has also declared its intention to develop an Australian Marine Conservation Plan which undoubtedly will reflect the need for marine development to be ecologically sustainable.²⁵ Thus, the Australian ocean policy system can be argued to have developed a culture that recognises the importance of the environment in oceans management and to be in the process of evolving legislation and appropriate institutions to give substance to that culture. Is ESD a realistically achievable policy objective for the marine environment? Halloway points out that 'even the (biological) diversity

of (marine) areas that have been *exhaustively studied* is not fully appreciated' (my emphasis).²⁶ Furthermore, the linkages between different aspects of the environment are not well understood, so the potential impact of a certain activity may not be fully predictable.²⁷ Heclo observes that 'policy is not a self-evident, independent behaviour fact. Policy acquires meaning because an observer perceives and interprets a course of actions amid the confusions of a complex world.'²⁸ Achievability of ESD in the marine environment appears to be less important in an analysis of Australian oceans policy than is the degree of acceptance for the *idea* of ESD amongst policy actors. Policy analysis is not complete without consideration of that dimension of ideas and values which constitutes the culture of any public policy.

Policy culture not only gives context to the physical manifestations of public policy, it may even help to identify and delineate a policy system. Can diverse activities such as oil and gas exploration, fishing, shipping, tourism, scientific research, and others, be grouped together under the rubric of a single policy system simply because they all occur at sea – a sea that is vast and includes environments that range from shallow rock pools and sunlit, warm waters to the cold depths of ocean?²⁹ The belief that users of the ocean share common problems and confront the same challenges appears to be strongly held both in Australia and overseas. For example, Miles argues that 'interdependence is pervasive among processes of ocean use'.³⁰ The Preamble of *The United Nations Convention on The Law of the Sea* (LOSC) also states: 'The States Parties to this Convention, (are) *Conscious* that the problems of ocean space are closely interrelated and need to be considered as a whole.'³¹ In Australia, the *Oceans of Wealth* report, of 1989, argued the existence of 'a marine sector' through the suggestion that ocean-based activities incur higher costs and greater risk than do comparable activities on land, and that marine activities rely on a common knowledge base and use similar technology.³²

The extent to which ocean users share a policy culture is evident in the use of common terminology; for example, acronyms such as UNCLOS, AMISC, the MID Program, GBRMPA, and so on, are all commonly understood by ocean-policy actors but would mean little to those outside of the policy system. Australian oceans policy also reflects a communal interest in issues such as marine pollution, a developing legal regime for oceans management, and the need for an improved national oceans policy. All of these matters have, at various times, been the subject of healthy discussion amongst policy actors and of government inquiry. It would seem, therefore, that oceans-policy actors become such at least partly because they perceive themselves to be participants in an ocean policy system, and in doing so they lend substance to the policy system itself.

With recent entry into force of the LOSC and growing awareness of the fragility of marine ecosystems, Australia's oceans policy culture seems to be strengthening. Enhanced awareness of a common oceans realm is increasingly reflected in the legal and institutional arrangements that support Australia's oceans policy. For example, in 1995, the Australian Marine Industries and Sciences Council (AMISC) was established under sponsorship of the Commonwealth Department of Industry, Science and Technology in order *inter alia* 'to advise the Government on how to develop the marine industries that will operate in the exclusive economic zone'.³³ Other initiatives include the Ocean Rescue 2000 program, discussed above; the Marine Industries Development (MID) Program along with associated activities such as the Marine Industries Support Network;³⁴ and establishment by the Australian and New Zealand Environment and Conservation Council, in 1994, of a Maritime Accidents and Pollution Task Force, its ongoing consultations with marine users in 1995, and report of 1996.³⁵ Each of these developments contributes to the matrix of activity and declared intentions that helps to elucidate the present state of Australia's ocean policy.

Discussion of the need for improvement of Australia's national oceans policy is weakened by overly narrow understanding of the nature of public policy. Public policy is neither a synonym for 'public plan' nor 'national strategy'. It cannot fruitfully be imposed upon actors in a policy system by elites, nor can it be developed against unrealistic criteria that undervalues the complexity of interests involved in the policy system. Understanding the changing, non-definitive nature of public policy, and the role played by all policy actors in the policy system, would help to discourage exaggerated expectations about the power and significance of a formally promulgated statement of government policy. It might also stem subsequent disillusionment should the Federal Government acknowledge a particular version of a national oceans policy and circumstances then deviate the policy from that which was articulated.

Public policy is the product of a complex interplay of values, interests, and resources which manifests itself mainly through the authority of governments. Articulation of Australia's ocean policy will help to facilitate scrutiny of the values and assumptions it embodies, and assist consideration of its strengths and weaknesses; however, the absence of formal articulation of policy does *not* equate to the absence of policy. Ocean-related activity and governmental encouragement or restriction of that activity is not a random process that takes place with regard only to egoistic self-interest and blatant disregard for principle. Public policy can be determined through analysis of the prevailing opinions and actions of all policy actors (including governments) along with review of the institutional structures and legislation that guide policy-related activity.³⁶

If present efforts to articulate a national oceans policy are to produce enduring, useful and achievable outcomes, those who seek to guide Australia's oceans policy must understand fully the nature of the policy realm as it exists today – including a thorough appreciation of the capabilities, needs and influence of all policy actors, along with the role played by policy

culture. In short, they must understand where Australia's oceans policy has been, where it is now and how it evolved into its present form. This essential first step is unlikely to be achieved for as long as there is a misconception that equates the absence of a government policy-statement with an absence of policy.

ENDNOTES

- ¹ Davis, G. et al. (eds), *Public Policy in Australia*. St. Leonards, NSW: Allen & Unwin, 1993. p. 16.
- ² Statement by the Prime Minister, The Honourable P J Keating, No. 144/95, 8 December 1995.
- ³ Hunt, C. 'The Management of Coastal Resources: A job for the Commonwealth?', *Current Affairs Bulletin*. Vol. 69, No. 10. March 1993. p. 24. (Discusses inter-governmental conflict in coastal-zone management); and Knecht, R.W. et al. 'National Ocean Policy: A Window of Opportunity', *Ocean Development and International Law*. Vol. 19. 1988. pp. 114 & 134. (Discusses the problems associated with sectoral management of ocean affairs in the United States); and, Miles E.L., 'Concepts, Approaches, and Applications in Sea Use Planning and Management' *Ocean Development and International Law*, Vol. 20. 1989., p. 227. (Discusses the weakness of oceans management arising from 'horizontal' fragmentation between governments and various public-sector agencies.); along with, Report of the Review Committee on Marine Industries, Science and Technology. (*McKinnon Report*) *Oceans of Wealth*. Canberra: Australian Government Publishing Service. 1989. p. xvi. (A comprehensive summary of specific actions that might improve Australia's oceans policy).
- ⁴ Vallejo, S.M.A., 'Integrated Marine Policies: Goals and Constraints' in Fabbri, P. (ed.) *Ocean Management in Global Change*. London & New York: Colombo '92 Elsevier Applied Science. 1992. p. 153.
- ⁵ Miles, op. cit., p. 229. Ironically, Miles firmly associates policy formulation with governmental decision-makers and therefore fails to significantly enhance the sophistication of marine-policy discussion.
- ⁶ Considine, M. *Public Policy: A Critical Approach*. South Melbourne: Macmillan, 1994. p. 1. Considine identifies both of these approaches as alternative theories for analysis of public policy to the 'systems approach' that he uses, and which is generally accepted in this essay as being of most use.
- ⁷ *ibid.*, p. 4.
- ⁸ *ibid.*, pp. 5-6.
- ⁹ *ibid.*, p. 7.

- ¹⁰ Davis, op. cit., p. 11.
- ¹¹ *ibid.*, p. 185.
- ¹² Considine, op. cit., p. 6, and Fischer, F. *Politics, Values and Public Policy: The Problem of Methodology*. Colorado: Westview Press, 1980. p. 9.
- ¹³ Davis, op. cit., p. 4.
- ¹⁴ Quiggin, J. 'Egoistic Rationality and Public Choice Theory and Evidence' *CRES Working Paper 1984/24*. Canberra: Australian National University, Centre for Resource and Environmental Studies. 1984. Quiggin provides a useful, although blatantly critical, outline of public choice theory (pp. 2-4) and concludes: 'Like other caricatures, these (public choice) models present certain recognisable features, exaggerated out of all proportion. The results of public choice theory thus have some immediate appeal, especially to neoclassical economists, but do not stand up to empirical scrutiny.' p. 4.
- ¹⁵ Kenchington, R. & Crawford, D. 'On the Meaning of Integration in Coastal Zone Management', *Ocean & Coastal Management*. No. 21 (1993) England: Elsevier Science Publishers. p. 117.
- ¹⁶ *ibid.*, p. 115.
- ¹⁷ *ibid.*, pp. 116 & 125.
- ¹⁸ *ibid.*, p. 126.
- ¹⁹ *ibid.*, p. 125.
- ²⁰ Adams, H. 'A timely step towards a proper oceans policy', *The Canberra Times*. 7 April 1995. Harold Adams is chairman of the Australian Centre for Maritime Studies and vice-president of the Navy League of Australia. He was commenting on the establishment of the Australian Marine Industries and Sciences Council.
- ²¹ Fischer, op. cit. p. 2.
- ²² Considine, op. cit., p. 14.
- ²³ *ibid.*, pp. 14-15.
- ²⁴ Ecologically Sustainable Development has been defined by the World Commission on Environment and Development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' *Summary of the State of the Marine Environment Report*. Canberra: GBRMPA, 1995.
- ²⁵ Ivanovici, A. 'Pollution and Waste: Practical Implications of Maritime Pollution and Waste' Paper presented at the Royal Australian Navy Environmental Conference: Australian Defence Force Academy, Canberra. 17 May 1995. p. 3.
- ²⁶ Halloway, M. 'Diversity Blues' *Scientific American*. August 1994. p. 10.
- ²⁷ Scodari, P.F. *Wetlands Protection: The Role of Economics*. Washington, D.C.: Environmental Law Institute, 1990. pp. 26 & 27, and Anderson, D. 'Red Tides' *Scientific American*. August 1994, pp. 52-58. Also, do policy actors fully appreciate the implications of the precautionary principle – as adopted in the OSPAR convention of 1992 – which may be an essential aspect of ecologically sustainable development in the marine environment? See: Wieriks, K. & Kersten, H. 'Sea use management and the North Sea: The long and difficult road to sustainability.' Paper presented on behalf of North Sea Directorate, The Netherlands, at *Oceanology International 94*. Brighton, UK. 9 March 1994. p. 3.
- ²⁸ Hecllo, H. as quoted in Davis, op. cit., p. 16.
- ²⁹ Mangone, G.J. *Marine Policy for America*. Lexington, Massachusetts: Lexington Books. 1977. Mangone discusses the difficulties experienced by the United States' 'National Oceanic and Atmospheric Agency' in 'collecting all the complex activities of the bureaucracy pertaining to the oceans, the seabed, and the coastal zone under one agency'. p. 299.
- ³⁰ Miles, op. cit., p. 233.
- ³¹ 'Preamble' *Official Text of the United Nations Convention on the Law of the Sea*. New York: United Nations, 1983. p. 1.
- ³² *Oceans of Wealth*, op. cit., p. 4.
- ³³ Cook, P. (Senator) 'New Council to Help Develop Australia's Extended Marine Claim' *Press Release of Minister for Industry, Science and Technology*. Media Alert Number 53/95. Thursday, 2 March 1995.
- ³⁴ Perri, M. 'Towards a Comprehensive Oceans Policy for Australia' in Bateman, S. and Sherwood, D., *Oceans Management Policy: The Strategic Dimension*. Wollongong: Wollongong University, 1994. pp. 34-36.
- ³⁵ ANZECC 'Maritime Accidents and Pollution: Impacts on the Marine Environment from Shipping Operations' *A Paper for Public Comment*. Canberra: 1995; ANZECC, *Working together to reduce impacts from shipping operations*. Vols 1, 2 & 3. Canberra: 1996.
- ³⁶ A balanced foundation for subsequent policy decision-making – one that would be less open to suspicion of bias – might best be achieved if this phase of policy development were to be conducted by entities *outside* of government bureaucracy.