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The Development of *Australia's Oceans Policy*: Change and Stability in a Policy Community

by

Joanna Vince, BA (Hons)

Submitted in fulfilment for the requirements for the degree of Doctor of Philosophy

University of Tasmania
June 2004

DECLARATION

This thesis contains no material which has been accepted for a degree or diploma by the University of Tasmania or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of my knowledge and belief no material previously published or written by another person except where due acknowledgement is made in the text of the thesis.

Joanna Vince June 2004

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ABSTRACT

In December 1998, the Howard Government released *Australia's Oceans Policy*, a major initiative focused at providing a framework for implementing integrated ecosystem based management of Australia's vast marine domain. This thesis utilises a policy community approach to review the processes and institutions that led to the development of *Australia's Oceans Policy*. It argues that despite significant policy change affected by both external and domestic policy drivers, a key element in shaping responses to the policy has been stability within the policy community shaped paradoxically by 'offshore federalism' that has made it difficult to implement a fully integrated oceans policy.

Analysis of the development and implementation of the *Australia's Oceans Policy* indicates that change to ocean related policies embodied in the policy framework have been driven by several interrelated factors. These include debates over appropriate management of resources within and between sectoral groups; coordination of marine resource management between state and Commonwealth governments; and Commonwealth commitments to international instruments. New institutional arrangements established by *Australia's Oceans Policy* such as the National Oceans Office, National Oceans Ministerial Board, National Oceans Advisory Group and Regional Marine Plan Steering Committees, reflect a commitment towards integrated ocean management but at the same time confront the legal and jurisdictional framework established following a quarter century of 'offshore federalism'.

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ACRONYMS

Agriculture, Fisheries and Forestry Australia	AFFA
Asian Pacific Economic Cooperation	APEC
Australian and New Zealand Environment and Conservation Council	ANZECC
Australian Bureau of Agricultural and Resource Economics	ABARE
Australian Committee for the World Conservation Union	ACIUCN
Australian Conservation Foundation	ACF
Australian Fisheries Council	AFC
Australian Fisheries Management Authority	AFMA
Australian Fishing Industry Council	AFIC
Australian Fishing Zone	AFZ
Australian Geological Survey Organisation	AGSO
Australian Local Governments Association	ALGA
Australian Marine Industries and Sciences Council	AMISC
Australian Marine Science and Technology Company	AMSAT
Australian Nature Conservation Agency	ANCA
Australian Public Service	APS
Broken Hill Propriety	BHP
Convention for the Conservation of Antarctic Marine Living Resources	CCAMLR
Convention on the Regulation of Antarctic Mineral Resource Activities	CRAMRA
Council of Australian Governments	COAG
Commonwealth Scientific and Industrial Research Organisation	CSIRO
Department of Environment, Sport and Territories	DEST
Department of Industry, Science and Resources	DISR
Department of Transport and Regional Services	DOTRS
Ecologically Sustainable Development	ESD
Exclusive Economic Zone	EEZ
Fishing Industry Policy Council of Australia	FIPCA
Global Environmental Outlook	GEO
Great Barrier Reef Marine Park Authority	GBRMPA
Heads of Marine Agencies Group	HOMA

WWF

House of Representatives Standing Committee on Environment and Conservation **HORSCEC** House of Representatives Standing Committee on Environment, Recreation and the Arts **HORSCERA Humane Society International** HIS Intergovernmental Agreement on the Environment **IGAE MCCN** Marine and Coastal Community Network MPA Marine Protected Area **MPAs** Marine Protected Areas MRC Marine Resource Conservation Working Group Memorandum of Understanding MOU Ministerial Advisory Group on Oceans Policy **MAGOP** Multilateral High Level Conference **MHLC NCAP** National Coastal Action Program National Fishing Industry Council **NFIC** National Oceans Advisory Group NOAG National Oceans Office NOO Natural Heritage Trust **NHT** Nongovernmental Organisation NGO Ocean Rescue 2000 OR 2000 Offshore Constitutional Settlement **OCS** Pacific Forum Fisheries Agency FFA Regional Marine Plans **RMPs RAC** Resource Assessment Commission South East Regional Marine Plan **SERMP SOMER** State of the Marine Environment Report Sustainable Development Advisory Committee **SDAC** Third Meeting of the United Nations Conference on the Law of the Sea UNCLOS III United Nations Commission on Sustainable Development **CSD** United Nations Conference on Environment and Development **UNCED** United Nations Environment Program **UNEP** United Nations Law of the Sea Convention **LOSC** Western and Central Pacific WCP World Conservation Union **IUCN**

World Wide Fund for Nature

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INTRODUCTION

In December, 1998, the Australian government released a formal document entitled *Australia's Oceans Policy*. This document sets out for the first time a comprehensive, integrated, national approach to ecosystem based ocean management that covers Australia's vast ocean domain - 16 million square kilometres of ocean, an area which is twice the size of the continent's land mass. This policy has sought to integrate two parts of policy interests that have often been in conflict with each other. Throughout the twentieth century, sectoral interests (such as fishing, oil and petroleum mining) have often clashed with each other and with jurisdictional interests (such as the Commonwealth government, and state/Territory governments) which, in turn, have also frequently differed. Conflict within and between sectors has, in addition to jurisdictional divisions, resulted in an *ad hoc* domestic oceans regime.

During the past five years, the implementation of this oceans policy has not been characterised by full integration. Indeed, *Australia's Oceans Policy* is widely regarded as a Commonwealth initiative with little, if any, support and involvement from the state governments. Whilst consultation between the states and the

¹ Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely, (AGPS: Canberra), 1998.

² Ibid., 7.

Commonwealth was a priority during the early development stages, this communication stopped six months before the release of the oceans policy.³

Research aims, argument and significance

The purpose of this study is to examine how this less than fully integrated oceans policy outcome has come about. The primary research question is: What has caused policy change within the oceans policy arena and how has this change affected the development and implementation of *Australia's Oceans Policy*? In answering this research question, the objective is to identify periods of policy change that have affected the oceans policy process and to illustrate the events that have led to those changes. This thesis argues that an Australian oceans 'policy community' has existed in Australia from Federation, and its ability to adapt to policy change has ensured its longevity. In addition, this study demonstrates that the oceans policy process has not occurred in a vacuum. This research indicates that policy drivers outside the domestic policy process, such as pressure from actors who are parties to international instruments, have had a significant effect and have contributed to policy change.

The thesis argues that despite significant policy change affected by both external and domestic policy drivers, a key element in shaping responses to the oceans policy has been stability within the policy community shaped paradoxically by 'offshore federalism' that has made it difficult to implement a fully integrated oceans policy.

³ Foster, E. and Haward, M. "Integrated Management Councils A Conceptual Model for Ocean Policy Conflict in Australia", *Ocean and Coastal Management* 46, 2003: 547-563.

Analysis of the development and implementation of the *Australia's Oceans Policy* indicates that change to ocean related policies embodied in the policy framework have been driven by several interrelated factors. These include debates over appropriate management of resources within and between sectoral groups; coordination of marine resource management between state and Commonwealth governments; and Commonwealth commitments to international instruments.

This study is significant for a number of reasons. First, it recognises that states and Territories have real interests in oceans policy but are reluctant to pursue them as a result of past intergovernmental conflicts. A historical study of the past has been known to help researchers understand the present, and the future, and is therefore important in the analysis of policy change. Second, *Australia's Oceans Policy* is a world first attempt at a national approach across sectors and jurisdictions to ocean management and little research from a public policy perspective has been completed on this topic. Whilst Haward⁴, Wescott⁵ and Bateman⁶ (amongst others) have researched the development of *Australia's Oceans Policy*, this thesis is the first study to explore the development of oceans institutions and processes in Australia, whilst examining the external factors to the development process that have contributed to policy change.

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⁴ See Haward, M. "The ocean and marine realm", in Dovers, S. and Wild River, S. eds., *Managing Australia's Environment*, (Sydney: The Federation Press), 2003; Haward, M. and Herr, R. *Australia's Oceans Policy: Policy and Process*, ACORN Phase 2 Workshop, Vancouver 10-11 December 2000.

⁵ See Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", *Ocean and Coastal Management* 43, 2000: 853-878.

⁶ See Bateman, S. "Australia's Oceans Policy and the maritime community", *Maritime Studies* no.108, September-October, 1999: 10-18.

Notably, there has been an increase of interest from international non-government and non-sector based groups, and foreign governments in the development of *Australia's Oceans Policy* indicating that further research is sought after in this area.

Research design and method

The methodology used within this thesis is the institutional approach using descriptive-deductive methods.⁷ In the style of the descriptive approach (sometimes regarded as 'contemporary history')⁸, the thesis explores and analyses specific events, eras and institutions that describe the process that led to the development of *Australia's Oceans Policy*. Primary research, in the form of analysis of government documents supported by personal communications with Commonwealth government officers is utilised within this study to support the argument that coordination of marine resource management between state and Commonwealth governments has resulted in change to the oceans policy process.

The main analytic approach used to analyse *Australia's Oceans Policy* is the *policy community* derived from the work of Coleman and Skogstad⁹, Pross¹⁰ and Homeshaw¹¹. The policy community approach is used as a tool to illustrate the roles of significant actors involved in the policy area, the relationships between these

⁷ See Rhodes, R. "The institutional approach", in Marsh, D. and Stoker, G. eds., *Theory and Methods in Political Science*, (London: Macmillan Press), 1995, 42.

⁸ See Butler, D. *The Study of Political Behaviour*, (London: Hutchinson), 1958.

⁹ Coleman, W. and Skogstad, G. *Policy Communities and Public Policy in Canada: A Structural Approach*, (Ontario: Copp Clark Pitman Ltd), 1990.

¹⁰ Pross, A.P. *Group Politics and Public Policy*, (Toronto: Oxford University Press), 1986.

¹¹ Homeshaw, J. "Policy community, policy networks and science policy in Australia", *Australian Journal of Public Administration* 54, no.4, December 1995: 520-532.

actors and how these relationships influence policy change. This thesis pays particular attention to the categories of actors in a policy community as identified by Pross, (and further developed by Homeshaw): categories of the subgovernment, coordinating subgovernment, executive core, attentive public and international attentive public. The policy transfer approach, derived from the work of Dolowitz and Marsh¹², and Evans and Davies¹³, is analysed to overcome the caveats posed by policy community approach.

This thesis adds to this body of knowledge by introducing two new conceptual developments. *International collaborators* are identified as a subcategory of the international attentive public and as the group of international actors who can participate in policy development, implementation and change within the oceans policy community. Whilst they are located in the international attentive public, international collaborators are distinguished by their participation in, as well as their observation of, the policy process.

The *change network* is the second conceptual development that describes a group of actors who normally may not work together, but change their goals to do so whilst advocating change in the policy process. Following policy change, the network dissolves and the actors persist with their individual goals in the policy community. The use of these concepts is fundamental to the analysis of *Australia's Oceans*

¹² See Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", *Governance: An International Journal of Policy and Administration* 13, no.1, January 2000: 5-24.

¹³ Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multidisciplinary perspective", *Public Administration* 77, no.2, 1999: 361-385.

Policy. Both concepts help identify why certain actors choose to be part of the policy community and why some actors choose to leave it; whilst the change network helps determine why relationships change between certain actors and groups; and how they can create the dynamics that lead to policy change.

Scope and limitations

This thesis shows the nature of the structure of the policy community that led to policy change but not as fully intended. The research assesses oceans policy processes rather than simply examining outcomes. The scope of this thesis is limited to examining domestic marine policies in Australia. Although Chapter Seven makes reference to Canadian and New Zealand's oceans policies, it is limited to demonstrating their similarities to *Australia's Oceans Policy*. This comparison is used to indicate the extent of policy change and potential outward policy transfer which has possibly occurred within Australia's oceans policy community.

The usual limitations that affect the institutional methodological approach have been identified and attempts have been made to resist hyperfactualism¹⁴ and the lack of theoretical analysis. The policy community, policy transfer approaches and new conceptual developments are not intended to be regarded as a new, all encompassing theory but as a tool that forms a analytical framework that is used for a comprehensive analysis of the oceans policy in Australia. This thesis also does not seek to evaluate *Australia's Oceans Policy* as it is too soon to do so, however, it does

¹⁴ Rhodes, R. "The institutional approach", 48.

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examine the identifiable shortcomings of the development process. As identified by Simeon over three decades ago, the drawback of researching a live political issue, such as *Australia's Oceans Policy*, can result in documentation being unavailable or "hidden" to the researcher.¹⁵ It can therefore be assumed that the *South East Regional Marine Plan* process information is not always available.

Thesis structure

The thesis is divided into seven chapters. Chapter One introduces the analytical framework by outlining the conceptual development of the policy community. American studies that developed the concepts 'subsystem' and 'iron triangle' are first examined, followed by the British adaptation of subsystems into 'policy communities' and 'policy networks'. As indicated earlier, Chapter One introduces the work on policy communities by Pross and Homeshaw as the basis to the analysis of the oceans policy process. The policy transfer approach is used to eliminate some of the limitations of the policy community approach and the terms 'international collaborators' and 'change networks' are introduced as key conceptual developments used within the thesis to explain the dynamics of policy change.

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¹⁵ Simeon, R. *Federal-Provincial Diplomacy: the Making of Recent Policy in Canada*, (Toronto: University of Toronto Press), 1972, 19.

¹⁶ Truman, D. *The Governmental Process*, (New York: Knopf), 1951.

¹⁷ Lowi, T. "Four systems of policy, politics and choice", *Public Administration Review* 32, no.4, 1972.

¹⁸ Richardson, J. and Jordan, A. *Governing Under Pressure: The Policy Process in a Post Parliamentary Democracy*, (Oxford: Martin Robertson and Company Ltd), 1979.

¹⁹ See Rhodes, R. Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability, (Buckingham: Open University Press), 1997.

Chapter Two outlines the historical evolution of ocean policies in Australia from Federation until 1990, whilst examining the legal and jurisdictional framework that is the basis of all ocean policy decisions in Australia. It traces the beginnings of the Commonwealth and state animosity over the administration of marine resources as well as the evolution of sector based administration. The Chapter focuses on the event of policy change through the *Offshore Constitution Settlement* 1979 that reinforced Commonwealth powers over the offshore and supported the sector based approaches to marine management.

Following this, Chapter Three explores the development of the *Commonwealth Coastal Policy* and state coastal policies in Australia during the 1980s and 1990s. This Chapter emphasises that Commonwealth/state friction continued to dominate marine policy making. Nevertheless, it also demonstrates the shift of mindsets from marine resource exploitation to environment protectionism and this is supported by the Commonwealth's interest in marine science and technology. The domestic marine policies of this era reflect a global movement towards ecologically sustainable development, the increase of nongovernmental organisations in the ocean policy process and the use of marine science and technology to support sustainability.

Chapter Four turns to the examination of external factors that have influenced change to ocean and marine resource policies in Australia. The external factors are divided into three categories, those that occur within the domestic political environment; through Australia's involvement in regional initiatives; and through Australia's ratification of international agreements. The domestic external influences, whilst not

always directly influencing change to ocean policies, effect the ocean policy environment through changes to intergovernmental relations or the Australian Public Service. This Chapter illustrates that domestic decisions must be considerate of the political environment in the surrounding regions and in other nations beyond.

The thesis then continues with its chronological account of oceans policy development in Australia. Chapter Five analyses the development of *Australia's Oceans Policy* during 1997 – 1998. It begins by addressing the academic research that has questioned why Australia needed an oceans policy and continues with the examination of the oceans policy development process. It pays particular attention to the release of Issue and Background Papers, the public consultation process and the work of the Ministerial Advisory Group on Oceans Policy. The following Chapter Six, continues examining the policy process by detailing the release of *Australia's Oceans Policy* in 1998 to the release of the *Draft South East Regional Marine Plan* in 2003.

The roles of new institutional arrangements established by *Australia's Oceans Policy* such as the National Oceans Office, National Oceans Ministerial Board, National Oceans Advisory Group and Regional Marine Plan Steering Committees, are explored in Chapter Six and it examines how they reflect the commitment towards integrated ocean management whilst confronting the legal and jurisdictional framework established following a quarter century of offshore federalism. The responses to the release of the oceans policy from states, non sectoral and non government based groups are also examined.

Chapter Seven returns to assess the primary research question outlined in this introduction in terms of the empirical research detailed in preceding chapters. It illustrates and supports the argument by examining three key periods of policy change during 1982-1983; 1997-1998; and 2001-2003.

CHAPTER ONE

Policy Communities, Policy Change and Policy Transfer

1. Introduction

The process of policy development can be examined through many different parameters or analytical frameworks. The analytical frameworks explored in this chapter include the concepts policy community, policy network, and policy transfer, used as key analytical constructs in the analysis of the development of *Australia's Oceans Policy*. Policy communities and networks are useful tools that demonstrate the relationships between major actors involved in policy development during a particular point in time, and highlight the significant effects of change. Whilst this chapter demonstrates that there are many interpretations of the community and network concepts, all approaches centre on the role of significant actors that are involved in a policy area, the relationships between these actors, and how these relationships influence policy change.

The policy community and network research can be categorised based on areas of origin that include the United States of America, Britain, Canada and Australia. Writers from each region adopt a unique use and interpretation of the policy community and network concepts based on their political systems and environment. While the relevance of the American and British literature on policy communities and networks is examined, this chapter pays particular attention to the Canadian work of Pross, and Coleman and Skogstad.

Richardson's analysis of policy change within a policy community and the limitations of the policy community approach in this area are also investigated. He argues that the policy community concept can be used to explain the effects of change but it is limited as a tool in demonstrating why policy change occurs. This chapter then turns to policy transfer as a model of policy change that when used in conjunction with the policy community both approaches' caveats are alleviated. As a result of the marriage of the two approaches, new concepts are introduced. The first concept is a subcategory of Homeshaw's *international attentive public*. The term *international collaborators* distinguishes between the international actors within a policy community who are merely observers and those international actors who actively take part in policy transfer or contribute to policy change.

The difficulty with the use of transfer networks in explaining policy change within a policy community is that not all forms of policy change are based on transfer.

Therefore, the concept *change network* is established to describe the process where actors within a policy community form an *ad hoc* network to engineer policy change. Similarly to the transfer network, the change network exists only during the process of change and dissolves when the policy change is completed. In order to explore the dynamics of a change network, the origins of the policy network and community concepts are explored. This chapter begins with an examination of American research into the iron triangle, subsystem and network concepts before moving on to consider the Anglo-Canadian and Australian focus on policy communities.

2. American Research

The policy community and network concepts have evolved through research where many writers, who themselves did not introduce the concepts, acknowledged that interest groups and organisations played key roles in the process of policy making. As early as 1939, Griffith stressed the informality and non-constitutional interpretation of the policy making process.¹ He argued that policy making occurs in formal institutions that are surrounded by informal "whirlpools or centres of activity" where anyone with an interest in that policy participates.²

Truman, who examined the activities of the American government after the Second World War, also supported the view of Griffith that in policy making "the numerous participants are joined in some complex and informal process." Truman focused on Congress and the Executive where he found that dispersed leadership in one often reflects similar occurrences in the other.⁴ He also argued that government appeared to be a

protean aggregation of feudalities that overlap and criss-cross in an almost continual succession of changes. Some of the lines of control within these subsystems terminate in the presidency, some in elements within the legislature, and some in persons or groups legally 'outside' the government: a few in the hands of 'subordinate' executives, many more involve all of those in collegial arrangements so informal as to be dimly recognised even by chief participants.⁵

¹ Griffith, E. The Impasse of Democracy, (New York: Harrison-Hilton), 1939, 183.

² Jordan, G. "Subgovernments, policy communities and networks: refilling the old bottles?", *Journal of Theoretical Politics* 2, no.3, 1990: 322.

³ Ibid., 320

⁴ Truman, D. *The Governmental Process*, (New York: Knopf), 1951, 437.

⁵ Ibid.

It was Truman's use of the term 'subsystem' that generated interest for many writers in following years. One of these writers, Jordan, argues that Truman was close to developing what is now perceived as the notion of a policy network.⁶ Jordan claims that Truman could conceive the technical and informal process of networks and argued that there was some predictability amongst "the bewildering array of groups." However, most of his work contributed to pluralist theories of the 1950s and 1960s rather than the work on policy networks or policy communities.

Freeman's work, first published in the mid 1950s, remains of great importance to subsystem literature. Freeman adopted and developed Griffith's work, where he claimed policy making occurred within subsystems. He defines a subsystem as

the pattern of interactions of participants, or actors involved in making decisions in a special area of public policy...with special interest groups immediately attached.⁸

Freeman argues that the decisions that are made within a subsystem become the crux of public policy making, despite their importance or significance. However, Freeman's main focus in his work was the interactions between the main actors within the subsystem. He states,

emanating from the interactions of participants frequently characterised by their specialisation and sheer staying power, these policies individually may lack the glamour to attract wide interest. Nonetheless, their cumulative importance...cannot be disregarded.¹⁰

⁶ Jordan, G. "Subgovernments, policy communities and networks: refilling the old bottles?", 320.

⁷ Truman, D. *The Governmental Process*, 32, as cited by Jordan, G. "Subgovernments, policy communities and networks: refilling the old bottles?", 320.

⁸ Freeman, J. *The Political Process*, (New York: Random House), 2nd ed., 1965, 11.

⁹ Freeman, J. *The Political Process*, (New York: Random House), 1955, 33.

¹⁰ Ibid.

During the late 1960s, Lowi introduced the concept 'iron triangle' to explain the mutual dependency between the government, governmental agencies and pressure groups within the subsystem.¹¹ Each actor within the iron triangle depends on the other two in a "symbiotic interaction."¹² In a later analysis, Peters explains that

the pressure group needs the agency to deliver services to its members and to provide a friendly point of access to government, while the agency needs the pressure group to mobilise political support for its programs among the affected clientele. ¹³

The stable actors within the triangle have similar interests and function reasonably well within the subsystem of a narrow policy area. Lowi also argued that the distinction between public and private is slowly disintegrating due to the private sphere dominating the public sphere in a "system of private governments." ¹⁴ In other words, numerous different types of interest groups compete for claims to public resources and the government must intervene to enable fair access for these groups.

The iron triangle concept remains important as an explanatory tool for subsystem analysis in America. It can be argued that its applicability to other political systems is limited. The iron triangle has been criticised as being too static, closed and rigid to explain the complex political process. Interestingly, it was an American writer, Heclo who has been a key critic of the concept and found that the iron triangle

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¹¹ Lowi, T. "How farmers get what they want", *Reporter*, 1964: 34-36; Lowi, T. "Four systems of policy, politics, and choice", *Public Administration Review* 32, no.4, 1972.

¹² Rhodes, R. *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*, (Buckingham: Open University Press), 1997, 34.

¹³ Peters, G. American Public Policy, (Basingstoke: Macmillan), 2nd ed., 1986, 24; quoted by Rhodes, R. Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability, 34.

¹⁴ Jordan, G. "Subgovernments, policy communities and networks: refilling the old bottles?", 323.

concept "is not so much wrong as it is disastrously incomplete."¹⁵ The triangular nature of relationships did not fully explain the political process and was limited to observing a relatively small number of actors. Heclo uses the term 'issue network' to describe the policy making process that is wide, open and has numerous participants.

Heclo perceived that open issue networks of people existed in and had influence on the policy process. These issue networks have numerous actors who all have varying degrees of commitment and dependence on other actors within the same policy environment.¹⁶ In contrast to the iron triangle, there are large numbers of actors, who through shared knowledge link together to form a fluid issue network based on "common technical expertise."¹⁷

In his analysis, Heclo observed the individuals on the micro level of politics whose disagreement and struggles sometimes bordered on chaos.¹⁸ He demonstrated that the pressure groups within an issue network do not necessarily have dominance over the policy area and can operate on many levels. He argues that "questions of power are still important. But for a host of policy initiatives...it is all but impossible to identify clearly who the dominant actors are."¹⁹ Issue networks are, in that case more accessible, larger and more unpredictable. Heclo's introduction of issue networks

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¹⁵ Heclo, H. "Issue networks and the executive establishment", in King, A. *The New American Political System*, (Washington DC: American Enterprise Institute for Public Policy Research), 1978, 88.

¹⁶ Heclo, H. "Issue networks and the executive establishment", 102.

¹⁷ Ibid.

¹⁸ Atkinson, M and Coleman, W. "Policy networks, policy communities and the problems of Governance", *Governance* 5, no.2, April 1992: 159.

¹⁹ Heclo, H. "Issue networks and the executive establishment", 102.

and the problem of issue fragmentation and lack of dominant actors within policy areas encouraged an array of debate between political writers.

Gage developed a network model that illustrates how networks work in the policy process (see Figure 1.1). He argues that there are three kinds of intergovernmental networks that function within the American policy process. The first is Heclo's issue network that is always initially activated during political activity. Second, is the interorganisational policy network that is less extensive than the issue network, however, it wields a higher degree of functional integration between the actors within it.²⁰ Linkages between the actors within the interorganisational network work vertically and horizontally, and require "multilateral brokers for effective functioning."²¹

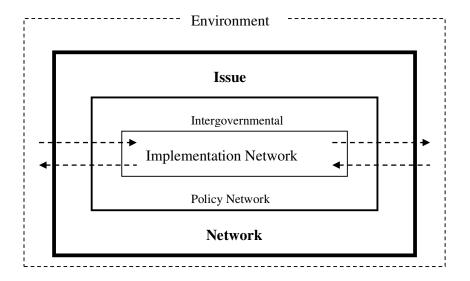
This model illustrates that this network is inside the issue network and is recognised as being part of the policy formulation stage of the policy process. The third type of network is the implementation network that develops during the implementation stages of the policy process. This network has a greater array of actors within it, beyond the one formal organisation.²² It is illustrated within the model as being inside the interorganisational network.

²⁰ Gage, R. "Key intergovernmental issues and strategies: an assessment and prognosis", in Gage, R. and Mandell, M. *Strategies for Managing Intergovernmental Policies and Networks*, (New York: Praeger Publishers), 1990, 130.

²¹ Ibid., 131.

²² Ibid.

Figure 1.1 Theoretical Relationships Among Three Kinds of Intergovernmental Networks



Source: Gage, R. "Key intergovernmental issues and strategies: an assessment and prognosis", in Gage, R. and Mandell, M. *Strategies for Managing Intergovernmental Policies and Networks*, (New York: Praeger Publishers), 1990, 130.

Arguably, Gage's model has a number of limitations. It works effectively when applied to American policies but is limited when applied to policies developed in other political systems. Gage does not explain why 'environment' is important to the model, who or what makes up this environment and how it affects the three networks during the policy process. Moreover, there is no explanation as to why different networks take on different roles throughout the stages of the policy process. Another factor that Gage does not examine is what type of network forms after implementation and how this impacts the policy process.

3. British Research

The issue network concept was useful in explaining the American policy process, however, it could not be applied so fluently to other political systems. During 1979, British writers Richardson and Jordan published *Governing Under Pressure: The Policy Process in a Post Parliamentary Democracy* that underlines the shift from the study of traditional institutions to the 'post-parliamentary thesis' which distinguished models of government with the act of governing.²³ Richardson and Jordan attempt to reconcile the issue of pluralism and the role of different actors in the policy making process. These actors include the electorate, political parties, Cabinet, Parliament and other interest groups.²⁴ Richardson and Jordan hypothesise that each policy area is made up of these actors and fragmented into a subsystem called the 'policy community'. They argue that

the policy making map is in reality a series of vertical compartments and segments – each segment inhabited by a different set of organised groups and generally impenetrable by "unrecognised groups" or the general public.²⁵

Richardson and Jordan claim that the cooperation of the different groups, the policy community and a consensual style of communication better accounts for policy outcomes than the obvious party positions and parliamentary influences.²⁶

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²³ Richardson, J. and Jordan, A. Governing Under Pressure: The Policy Process in a Post Parliamentary Democracy, (Oxford: Martin Robertson and Company Ltd), 1979. For a review of his work also see Richardson, J. "Government, interest groups and policy change", Political Studies 48, 2000: 1006-1025.

²⁴ Homeshaw, J. *The Transition of Australian Science Policy 1965-1990*, (PhD Thesis, University of Tasmania) 1994, 20.

²⁵ Richardson, J. and Jordan, A. Governing Under Pressure, 174.

²⁶ Ibid., 74.

Richardson and Jordan's perception of a policy community suggests a predominantly closed process where interest groups lobby the government for a "standing' in the policy making community that insider status confers." In this type of policy community, the government is central to managing the complex environment. Homeshaw explains Richardson and Jordan's position further:

Policy is therefore the outcome of a process of adjustment based on mutual need to achieve objectives and formulated in a proliferation of institutions and processes designed to negotiate the accommodation of interests.²⁸

Richardson and Jordan demonstrate through their work that policy communities can be used as an analytical tool to explain the political process. They fail to clarify, however, the characteristics and dimensions of policy communities, their issue scope and the role of central government.²⁹

Richardson and Jordan developed a way of comparatively analysing policy communities (See Figure 1.2). Their model illustrates that each political system displays a number of differing patterns or styles of policy making. The first style is either an anticipatory style where there is a tendency to anticipate problems, or a reactionary style. Secondly, there is either a consensus-seeking style where decisions are made with agreement between all parties, or a style where decisions are imposed on society by the policy makers.³⁰

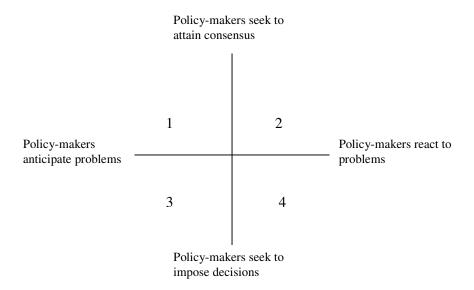
²⁷ Ibid., 100.

²⁸ Homeshaw, J. The Transition of Australian Science Policy 1965-1990, 20.

²⁹ Ibid., 21; Rhodes, R. Power Dependence, Policy Communities and Inter-governmental Networks, (Essex Papers in Politics and Government, no.30 University of Essex: Department of Government), September 1985, 8.

³⁰ Parsons, W. Public Policy: Introduction to the Theory and Practice of Policy Analysis, (United Kingdom: Edward Elgar Publishing Limited), 1995, 186.

Figure 1.2 Dimensions of Policy Style



Source: Adapted from Richardson, J. Policy Styles in Western Europe, (London: Allen and Unwin), 1982, 13; in Parsons, W. Public Policy: Introduction to the Theory and Practice of Policy Analysis, (United Kingdom: Edward Elgar Publishing Limited), 1995, 186.

Richardson uses this model to demonstrate that although some countries are moving towards community or network structures, the interaction within the communities will be different depending on the political system.³¹

Jordan, however, does not move away from his earlier definition of the term that he developed with Richardson. In an article published in the *Journal of Theoretical Politics* in 1990, Jordan questions whether the interest in policy communities and networks is just the act of "refilling the old bottles?"³² Jordan challenges the definitions that have been given to the policy community and network terms and attempts to devise a level of consistency with their use. Despite this, his definitions are limited to his own work and those he constructed with Richardson. The policy

³¹ Ibid., 186.

network is recognised as a link between the actors in a policy community as Wilks and Wright³³, and Atkinson and Coleman³⁴ suggest in their research.³⁵ Nonetheless, Jordan argues that even their definitions are confusing as the writers have already pre-empted the meaning of the terms policy community and network. Jordan concludes "policy community is not the answer to how policy is made but it is a useful generalisation which needs refinement."³⁶

In his later work, Jordan along with Maloney, continues to argue the importance of policy communities but focuses on the American use of the term 'subgovernment'.³⁷ They argue that whether or not a policy community exists in a conflicting policy area, features of a subgovernment are still present.³⁸ The policy community that must deal with conflict resolution is a limitation to the policy community approach as "policy making very often cannot be contained in the single community."³⁹

Rhodes examines the shortfalls to Richardson and Jordan's model and argues that "it has been used as an all-embracing metaphor." Rhodes moves the debate in another direction, and examines five types of policy network where the policy community is

³² Jordan, G. "Subgovernments, policy communities and networks: refilling the old bottles?".

³³ Wilks, S. and Wright, M. Comparative Government-Industry Relations, (Oxford: Claredon Press), 1987

³⁴ Atkinson, M. and Coleman, W. "Strong states and weak states: sectoral policy networks in advanced capitalist economies", *British Journal of Political Science* 19, 1989: 47-67.

³⁵ Jordan, G. "Subgovernments, policy communities and networks", 334.

³⁶ Ibid., 337.

³⁷ Jordan, G. and Maloney, W. "Accounting for subgovernments: explaining the persistence of policy communities", *Administration and Society* 29, no.5, November 1997: 557-572.

³⁸ Ibid., 557.

³⁹ Ibid., 568.

⁴⁰ Rhodes, R. Power Dependence, Policy Communities and Inter-governmental Networks, i.

considered one of these networks. Through the Rhodes typology, the policy community is a network that is relatively closed, with restricted membership, vertical interdependence and invariability to the general public.⁴¹ Policy communities are perceived as being part of power dependence relationships in societies.

Consequently, Rhodes considers the concept of power as being

a medium of exchange for resources and not part of the process of controlling both the structures of exchange and the media exchanged.⁴²

Rhodes concedes that Heclo's concept of an issue network is also one type of policy network, but is the least integrated. Issue networks have a large number of participants, however, a strong focal bargaining point does not exist.⁴³ The other three types of networks are professionalised networks, inter-governmental networks and producer networks. All five networks differ through distinguishable structures such as constellation of interests, membership, vertical independence, horizontal interdependence and the distribution of resources.⁴⁴

Rhodes claims that there are a variety of networks that exist other than the five types and it is important to establish comparisons between them. He also suggests that each policy area constitutes different types of relationship patterns between the participants and therefore each network is unique.⁴⁵ Rhodes concludes that "the concept of networks may be 'elastic' and the number of applications to the British

⁴¹ Ibid., 18.

⁴² Homeshaw, J. The Transition of Australian Science Policy 1965-1990, 12.

⁴³ Rhodes, R. Power Dependence, Policy Communities and Inter-governmental Networks, 19.

⁴⁴ Ibid., 17-18.

⁴⁵ Ibid., 22.

government may be limited."⁴⁶ Rhodes expanded and reviewed his research in 1992 with Marsh. They updated the original table to offer formal definitions for the different characteristics of policy networks and communities (See Table 1.1).

Table 1.1 Types of Policy Networks: Characteristics of Policy Communities and Issue Networks

Dimension	Policy Community	Issue Network
	Membership	
Number of participants	Very limited number, some groups consciously excluded	Large
Type of interest	Economic and/or professional interests dominate	Encompasses range of affected interests
	Integration	
Frequency of interaction	Frequent, high-quality, interaction of all groups on all matters related to policy issues	Contacts fluctuate in frequency and intensity
Continuity	Membership, values, and outcomes persistent over time	Access fluctuates significantly
Consensus	All participants share basic values and accept the legitimacy of the outcome	Some agreement exists, but conflict is over present
	Resources	
Distribution of resources (in network)	All participants have resources basic relationship is an exchange relationship	Some participants may have resources, but they are limited basic relationship Consultative
Internal distribution	Hierarchical; leaders can deliver members	Varied, variable distribution and capacity to regulate members
Power	There is a balance of power among members. Although one group may dominate, it must be a positive-sum game if continuity is to persist	Unequal powers, reflecting unequal resources and unequal access - zero-sum game

Source: Marsh, D. and Rhodes, R. eds., *Policy Networks in British Government*, (Oxford: Oxford University Press), 1992, 251.

⁴⁶ Ibid., 39.

Marsh and Rhodes identify networks in Britain and some policy communities. One community they examine is the agricultural policy community which is identified as a closed relationship.⁴⁷ Most importantly, they claim that policy communities and networks are relationships between the state and interest groups, and are meso-level concepts.⁴⁸ Marsh and Rhodes argue, however, that policy networks do not provide a satisfactory explanation for policy change. They find that

first, focusing on policy networks will never provide an adequate account of policy change, because such networks are but one component of any such explanation. Second, there is no agreed definition of, or criterion for measuring, the degree of change in policy networks...In short, the concept of policy networks does not provide an explanation of policy change.⁴⁹

Zito and Egan, although not British, use Rhodes' policy network approach to isolate the roles of actors and their importance within the European Union's policy process on environmental management.⁵⁰ Their main focus is how much influence networks have during each stage of the policy making process, especially during the development and implementation stages. They examine two case studies, first the British environmental management standard, and second, the European ecomanagement audit. Zito and Egan admit that the cases do reveal some limitations to the network approach, and on the other hand, they also demonstrate the amount of influence the policy network has within the policy process. Arguably, there is a

⁴⁷ Marsh, D. and Rhodes, R. eds., *Policy Networks in British Government*, (Oxford: Oxford University Press), 1992, 27.

⁴⁸ Ibid., 249.

⁴⁹ Ibid., 261. In more recent work, Rhodes re-examines the policy network concept with new cases. See Rhodes, R. *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*, (Buckingham: Open University Press), 1997.

⁵⁰ Zito, A. and Egan, M. "Environmental management standards, corporate strategies and policy networks", *Environmental Politics* 7, no.3, Autumn 1998: 94.

multi-level process shaping European environmental policy especially within environmental management systems. This, as a consequence, demonstrates "the way in which different networks of environmental actors are pressured or restrained by what goes on in other institutional environments."⁵¹

Wilks and Wright also focused on policy networks in the British political system.⁵² Their work examines comparative industry-government relations where they identify the types of policy communities and networks that occur in industrial policy in Britain. They recognise that the relationships between key players in a policy area are purposeful and exist (or are terminated) to achieve the long or short term goals of the policy.⁵³

The relationships are relationships of mutual but asymmetric dependence. Each player's room for 'decision manoeuvre' on an issue is constrained by the material and intellectual resources available to him, appropriate to that issue and which he is prepared to use, and by those possessed by other players, who may perceive their own interests differently.⁵⁴

Whereas Rhodes is more concerned with the structural types of networks, Wilks and Wright are concerned with the interpersonal relationships that occur within the networks. They emphasise that the disaggregation that occurs within the industry sector occurs within all policy sectors.⁵⁵ Intra-governmental disputes are also

⁵² Wilks, S. and Wright, M. Comparative Government-Industry Relations, 4.

⁵¹ Ibid., 115.

⁵³ Ibid..

⁵⁴ Ibid., 5.

⁵⁵ Rhodes argues that this is not the case in later research. See Rhodes, R. *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*, 40.

identified as an important theme in Wilks and Wright's research.⁵⁶ These disputes can result in the development or termination of relationships between some actors in a policy network. Wilks and Wright claim that the ramifications of fragmentation within government and its agencies can inevitably cause policy change.

Wilks and Wright introduce the concept 'policy universe' that includes all actors (and potential actors) who share a common interest in the policy issue. They argue that the policy community is not a type of policy network, as Rhodes defines, but is a conceptually different phenomenon to the policy network.⁵⁷ As a result of the policy universe, the policy community is a smaller structure and congregates on the sectoral and sub-sectoral levels.⁵⁸ Each policy community is then identified by its policy focus, or the "commonality of product or products, service or range of services, a technology or range of technologies, a market, size of 'batch' and so on."⁵⁹ The policy communities, in turn, interact with one another in a network. The policy network becomes "a linking process, the outcome of those exchanges, within a policy community or between a number of policy communities."⁶⁰ The relationship between these concepts is outlined in Table 1.2.

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⁵⁶ Wilks, S. and Wright, M. Comparative Government-Industry Relations, 288.

⁵⁷ Ibid., 295.

⁵⁸ Ibid., 298.

⁵⁹ Ibid., 298.

⁶⁰ Ibid., 299.

Table 1.2 Policy Community and Policy Network: the Wilks and Wright Model

	Policy level	Policy actors
Policy area	Industry, education, transport, health, etc.	Policy universe
Policy sector	Chemicals, telecommunications, foundries, etc.	Policy community
Policy sub-sector (focus)	For example, for Chemicals policy sector: basic chemicals, pharmaceuticals, agrochemicals' paints, soaps and toiletries	Policy network
Policy issue	For example, health and safety, drug licensing, company profits, or 'limited list'	

Source: Marsh, D. and Rhodes, R. eds., *Policy Networks in British Government*, (Oxford: Oxford University Press), 1992, 19. Marsh and Rhodes placed the summary from Wilks, S. and Wright, M. *Comparative Government-Industry Relations*, (Oxford: Claredon Press), 1987, 300; into tabular form.

Wilks and Wright argue that the distinction between the policy community and network is so important for a number of factors. First, by defining the policy community, it is easier to make distinctions between groups of actors on the sectoral level but also within the broad sectoral categories. Second, policy communities that do not generate obvious policy networks can be easily identified. Lastly, members of a policy community that are excluded from the policy network can be examined. Wilks and Wright also add that by making the clear distinction between a policy community and policy network, different networks within one community can be examined. Moreover, members of a policy network can be drawn from many policy communities from within the same policy areas or from different policy areas.⁶¹

⁶¹ Ibid., 301.

4. Assessing the British and American Research

The British and American research on policy communities and policy networks is applicable to the region of origin. The many adaptations of the policy community and network concepts has made the terms so diverse, yet so questionable in the field of political studies. Dowding criticises both the American and British approaches that use the concepts policy community and policy network. In his article "Model or metaphor? A critical review of the policy network approach", Dowding argues that the concepts only catalogue the policy process into networks but achieve little else. Dowding states that the work of Marsh and Rhodes, along with Canadians Atkinson and Coleman, and Sabatier an American writer only attempts to connect the policy community and policy network concepts to theories and approaches. In addition, he argues that the policy community or policy network, and their connection with other approaches will never be "fundamental theories of the policy process."

Dowding examines the historical evolution of iron triangles to policy communities and focuses particularly on Richardson and Jordan's research. He demonstrates that their usage of policy networks, communities and other terms is metaphorical and that there has been no attempt made to categorise them into formal typologies.⁶⁵ Hence,

⁶² Dowding, K. "Model of metaphor? A critical review of the policy network approach", *Political Studies* XLIII, 1995: 136.

⁶³ See further discussions on Canadian Studies.

⁶⁴ Dowding, K. "Model of metaphor? A critical review of the policy network approach", 137.

⁶⁵ Ibid., 139.

the application of the terms as metaphors is useful but nevertheless they cannot explain transformation.⁶⁶ Dowding continues;

all we learn from the study in network terms is that if a policy community breaks down an issue network evolves and other groups are able to enter the policy process more forcibly. But it does not explain community breakdown, nor issue network transcendence, nor the dynamics of change. And it cannot do so, for part of what is to be explained is the creation and destruction of communities. The imagery is simply heuristics, though no less serviceable for that.⁶⁷

Dowding goes further to find caveats in the work of Rhodes, Wilks and Wright, and Marsh and Rhodes. He demonstrates that Marsh and Rhodes' approach does not explain the casual relationships within their model and that it uses the terms policy community and issue network as labels explaining the differences in policy formation in different policy sectors, rather than explaining the differences themselves. ⁶⁸

Researchers have since attempted to use Dowding's analysis as a direction to improve the policy community and network approaches. His work demonstrated the need for continuous criticism of the policy community and network concepts in order to achieve theoretically sound approaches. Notably, not all researchers use the policy community and policy network to formulate a new approach. Many rely on the concepts as descriptive tools to illustrate the policy process within the policy area that they are researching. Researchers also recognise a major strength of the policy

⁶⁶ Ibid.

⁶⁷ Ibid., 139.

⁶⁸ Ibid., 141-2.

community and network approaches that they 'fit in' with political, technological and sociological changes of modern society.⁶⁹

Dowding explains that his position has been misunderstood by his critics. He says,

what I termed 'sociological network analysis'...does, I believe produce explanatory models which can be developed in political science to demonstrate the important structural features of networks which cause certain types of policy outcomes, and thereby map structures of power. My scepticism stems from the triviality of most of the findings derived from network analysis, and from some careless inferences which have been drawn from otherwise meticulous work...By triviviality I mean that such findings merely demonstrate what most of us intuitively believe from more casual, nonformal, observation.⁷⁰

Dowding's article demonstrates that network analysis is important as a social science tool, however it may not produce many counter-intuitive findings.⁷¹ Dowding argues that British writers in particular should not only rethink the way they use the policy network approach but also the way they conduct and use their research methods.⁷² He also responds to Rhodes, who in a previous article accuses him of not understanding the terms 'resource dependency' and 'power dependency'. Dowding replies "They are right. I don't."⁷³ He explains that Rhodes does not use the terms within his empirical discussions and therefore the terms are useless if they cannot explain real events and institutions.⁷⁴

⁶⁹ Parsons, W. Public Policy: Introduction to the Theory and Practice of Policy Analysis, 185.

⁷² Ibid., 90.

⁷⁰ Dowding, K. "There must be end to confusion: policy networks, intellectual fatigue, and the need for political science methods courses in British universities", *Political Studies* 49, 2001: 89.

⁷¹ Ibid.

⁷³ Ibid., 100.

5. Canadian Research

A different approach to explaining the policy development process was applied in Canada whilst the British and American researchers argued over the policy community and network terminology. Canadian researchers questioned the approaches within the boundaries of their own political system and they established their own definition of a policy community approach. According to Pross, the concepts 'policy community' and 'subgovernment' introduced by British and American researchers did not articulate the reality of the Canadian policy process.⁷⁵ Pross found that the iron triangle concept was too closed to explain the policy process in the Canadian federal system. The British concept of policy networks was also limited when applied to the Canadian policy process.

Nevertheless, Pross applied the policy community concept to the Canadian policy process and defined it as being

part of a political system that - by virtue of its functional responsibilities, its vested interests, and its specialised knowledge – acquires a dominant voice in determining government decisions in a specific field of public activity, and is generally permitted by society at large and the public authorities in particular to determine public policy in that field. It is populated by government agencies, pressure groups, media people, and individuals, including academics, who have an interest in a particular policy field and attempt to influence it.⁷⁶

⁷⁴ Ibid.

⁷⁵ Pross, A.P. *Group Politics and Public Policy*, (Toronto: Oxford University Press), 1986.

Pross goes on to say that policy communities consist of the subgovernment and the attentive public. The subgovernment is composed of executive agencies and institutionalised interest groups and is the policy making centre of policy communities.⁷⁷ It is a close group of institutionalised groups and agencies that have the resources to deal with the policy community from a day to day basis. The attentive public, on the other hand, is scattered throughout the policy community without a defining or permanent presence.

It includes any government agencies, private institutions, pressure groups, specific interests, and individuals...who are affected by, or are interested in...but do not participate in the policy making on a regular basis.⁷⁸

Although the attentive public lacks the power of the sub-government, it plays a vital role in policy development and implementation. Pross argues that the main function of the attentive public is to maintain a policy review process. Additionally, the attentive public upholds the democratic ideals of diverse opinions within the policy community and a balance between those involved in the management of the policy to those who must endorse it in their everyday lives. Pross's policy community is illustrated through Figure 1.3.

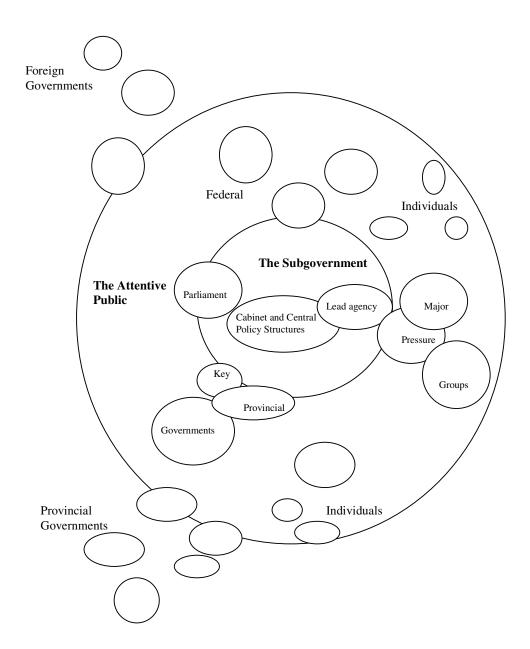
⁷⁶ Pross, A. P. *Group Politics and Public Policy*, 2nd ed., (Toronto: Oxford University Press), 1992,

⁷⁷ Ibid.

⁷⁸ Ibid., 99.

⁷⁹ Ibid.

Figure 1.3 The Policy Community



Source: Adapted from Pross, A.P. *Group Politics and Public Policy*, (Toronto: Oxford University Press), 1986, 100.

A policy community is a constantly evolving entity as the policy it represents is a live issue. The actors within a policy community may change their position within it depending on the status of the policy at the time. Moreover, the interest groups within the attentive public may drift in and out of the community and new interest groups have the ability to join when the issues of the policy affect them. Pross sees this mobility within a policy community essential as the interest groups within the attentive public change along with the public agenda. Additionally, the attentive public of each policy community varies with some actors having greater roles within one policy community than another.

Pross also acknowledges the importance of international influences that have similar interests to the attentive public. He relates it specifically to Canadian fisheries where trading partners play a large part in the direction the policy community is going. Beging also discloses the importance of foreign governments and how a policy community is not only dependent on actors within the borders of the country implementing the policy. International pressure groups, such as environmental groups (for example Greenpeace) or multinational corporations, also participate as foreign actors when entering a policy community.

⁸⁰ Ibid., 104.

⁸¹ Pross also argues that there are a number of determinants of variation that result in the type of structure the attentive public can form. See Pross, A. P. Group Politics and Public Policy, 106

⁸² Ibid., 103.

⁸³ Ibid.

Some interest groups are 'spontaneous issue orientated groups' that appear in the attentive public without warning and usually challenge the decisions of the subgovernment. The presence of these spontaneous groups is often a necessity as they encourage new ideas, alter the pace of change and extrapolate the inadequacies occurring within the policy.⁸⁴ Pross adds that their interventions within a policy community often create "shock waves".⁸⁵ Despite the mobility within a policy community the attentive public does engage in conversation over long term goals in the policy to the extent that it can without being part of the subgovernment.⁸⁶

Pross concludes that the primary policy makers are not always the most significant actors within a policy community. They often find the other actors as disruptive and do not always welcome interference by other subgovernment participants. It is the pressure groups that inform the public and draw interests from the community.⁸⁷

Pross's work can be considered a major turning point within policy community literature as it expands and adds new dimensions to the work of the British and American researchers. Coleman and Skogstad expand Pross's policy community concept in *Policy Communities and Public Policy in Canada: A Structural Approach*. Coleman and Skogstad, whilst heavily basing their direction on the definition applied by Wilks and Wright, define a policy community as one that includes

⁸⁴ Ibid., 104.

⁸⁵ Ibid.

⁸⁶ Ibid., 105.

⁸⁷ Pross, A. P. Group Politics and Public Policy, 107.

all actors or potential actors with a direct or indirect interest in a policy area or function who share a common "policy focus," and who, with varying degrees of influence shape policy outcomes over the long run.⁸⁹

Following Pross, they subdivide the policy community into the sub-government and attentive public. Given that, a policy network describes

the properties that characterise the relationships among the particular set of actors that forms around an issue of importance to the policy community.⁹⁰

Coleman and Skogstad identify six types of policy networks that vary across three dimensions; pluralist, closed and state directed (See Table 1.3).

Table 1.3 Groupings of Policy Networks

Groupings of policy networks		
Pluralist	Closed	State Directed
Pressure pluralism	Corporatism	
Clientele pluralism	Concertation	
Parentela pluralism		

Source: Coleman and Skogstad, *Policy Communities and Public Policy in Canada: A Structural Approach*, (Ontario: Copp Clark Pitman Ltd), 1990, 27.

Coleman and Skogstad argue that pluralist networks occur "where the state authority is fragmented and the organised interests are at a low level of organisational

⁸⁸ Coleman, W. and Skogstad, G. *Policy Communities and Public Policy in Canada: A Structural Approach*, (Ontario: Copp Clark Pitman Ltd) 1990.

⁸⁹ Ibid., 25.

⁹⁰ Ibid., 26.

development." The fragmented state with a weak political system results in group-state relations where the interest groups interact with the state independently. 92 Therefore, the pressure pluralism network occurs when these groups "assume primarily a policy advocacy role and state agencies remain autonomous." Clientele pluralism also occurs in a fragmented state with low organisational development but there is little differentiation between the state officials and organised interests. The last pluralist network, parentela pluralism, occurs when organisational interests gain dominance within a governing party and state authority is defused to the officials working on the regional levels. 94

When policy networks are closed, the state decision making capacity is concentrated and well coordinated, and organisations have a monopoly relationship with the dominant governmental agency. The corporatist network is the first of these closed networks and is what Coleman and Skogstad call "multilateral in composition." In other words, corporatist networks occur when two or more parties, who are representative of producer or consumer industries, participate along with the state in policy development and implementation. The second closed network, concertation, occurs when a single party participates with the state in policy development and implementation. State directed networks are made up of many state agencies and

⁹¹ Ibid., 27. Also see Cashmore, B. and Vertinsky, I. "Policy networks and firm behaviours: governance systems and firm responses to external demands for sustainable forest management", *Policy Sciences* 33, no.1, 2000: 5.

⁹² Coleman, W. and Skogstad, G. Policy Communities and Public Policy in Canada, 27.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid., 28.

⁹⁶ Ibid.

sectoral representatives. They are highly autonomous and well coordinated, however, state officials dominate policy making.⁹⁷

Coleman and Skogstad come to a number of conclusions on policy communities and networks in Canada. First, communities and networks are best understood when attention is paid to "the broader political, economic, and ideological environment within which they function...and the legacy of history." Second, policy communities change with time and they in turn change policy networks. These changes often reflect the changes within the political system and society as a whole. 99 Coleman and Skogstad identify three main patterns of network change;

- 1. pressure pluralism > state direction > pressure pluralism
- 2. concertation > pressure pluralism
- 3. pressure pluralism > corporatism¹⁰⁰

Coleman and Skogstad argue that other patterns of changes can exist, however, their analysis was limited to their case studies.

Despite this work, Atkinson and Coleman recognise the importance of the policy community and policy network approaches and argue that if they are to be more widely accepted, three problems must be addressed. These include that

network and community concepts encounter obstacles in incorporating the influence of macropolitical institutions and the power of political discourse; they have some difficulty in accommodating the internationalisation of many policy

⁹⁷ Ibid., 29.

⁹⁸ Ibid., 314.

⁹⁹ Ibid., 321.

¹⁰⁰ Ibid., 323-324. Detailed descriptions of the three changes can be found here.

domains; they have not addressed well the issues of policy innovation and policy change. 101

Coleman along with Skogstad developed a clear distinction between a policy community and a policy network. They see a policy community as being where the actors form a relationship around an issue area whilst a policy network is the relationship between the actors, "particularly in the subgovernment". Atkinson and Coleman support this view. They also disagree with Jordan that the terminology needs closure. They claim the terms policy community and network are used to describe complex relationships but do not necessarily convey their complexity as concepts. One of the complexity as concepts.

Atkinson and Coleman argue that the policy network and community approaches attempt to identify who are the actors and which ones are the most powerful in policy development and therefore are of interest to so many researchers.¹⁰⁴ They add,

communities or networks have conceptual appeal because they convey, simultaneously, the impression of inclusiveness and exclusiveness. Networks have shape and identity, but they are also open systems that do not have clear boundaries. Communities suggest a more organic connection among participants, but they too are relatively open. The question then becomes: how open?¹⁰⁵

Atkinson and Coleman also identify a number of dimensions that are important in understanding the functions of a network and these include the degree of power, the number of dependency relationships and distribution of organisational resources.

104 Ibid.

¹⁰¹ Atkinson, M and Coleman, W. "Policy networks, policy communities and the problems of Governance", 154.

¹⁰² Ibid., 158.

¹⁰³ Ibid.

¹⁰⁵ Ibid., 159.

Atkinson and Coleman suggest that the policy community and network approaches are useful as snapshots of a policy process at a particular point in time. They cannot, however, explain the process of policy change.¹⁰⁶

6. Australian Research

There has been limited attention given to the policy community or policy network concepts in Australia. Nonetheless, the research that utilises the policy community and policy network approaches demonstrates that the concepts are applicable to the Australian political system, although some variations have been made to the existing concepts. Haward examines the use of "issue communities" in marine resource policies in Australia and argues that this analytical scheme is "an important component in the process by which policy is made." Haward establishes that interaction between key policy actors within the policy environment can help explain the policy process. This work does little, however, to add the conceptual development of the policy community approach.

Bell, in *Business-Government Relations in Australia*, examines pluralism and to what extent it reflects the reality of business-government interactions. He argues that although pluralist inspired models describe these interactions adequately, they have difficulty in explaining

¹⁰⁶ Ibid., 167.

¹⁰⁷ Haward, M. "Marine resource policy in Australia: the policy environment, the policy process and the issue community", *Maritime Studies*, May/June 1986: 12.

Bell, S. "Business and government: Patterns of interaction and policy networks", in Bell, S. and Wanna, J. eds., *Business-Government Relations in Australia*, (NSW: Harcourt Brace Jovanovich), 1992.

where government or state agencies may have a degree of autonomy from myriad interest groups demands. They are also weak in explaining cases where policy suddenly takes a radical new departure, where policy succession is not based on incremental change, or in cases where group access is restricted or privileged.¹⁰⁹

In his analysis of Richardson and Jordan's work, Bell finds the corporate pluralism model a useful stepping stone to further research using the policy community and network approaches. He argues that Pross's subgovernment and policy community concepts most applicable to the Australian political environment. Bell also acknowledges Atkinson and Coleman's identification of policy networks based on clientele pluralism, parentela pluralism, corporatism and state directed networks is useful "to describe the actual or potential patterns of policy interaction between business and government." Pressure groups are often seen as the main factors placing demands on the state. What Atkinson and Coleman's approach demonstrates and that pluralist based models do not, is that governments and state agencies can in some circumstances be the driving force exerting demands on pressure groups. This is vital when observing a complex relationship such as between business and government in a state directed network.

Homeshaw also uses Pross's typology as a basis to her work. She examines the policy community and network debate in detail and expands the community approach by further conceptual developments and examining policy change. Homeshaw's thesis examines science policy in Australia from the year 1965 to 1990.

¹⁰⁹ Ibid., 104-105.

¹¹⁰ Ibid., 107.

¹¹¹ Ibid., 109.

¹¹² Homeshaw, J. The Transition of Australian Science Policy 1965-1990.

where she uses the policy community approach to explain the extent of policy change in the science policy. The work of Pross, Coleman and Skogstad, and Atkinson and Coleman are prevalent in this thesis. Homeshaw argues that the distinction between the subgovernment and attentive public, as identified by Pross, are essential as they separate

> the actors who actually make significant decisions from those who simply influence such decisions. It is therefore a catalyst in recognising which actors are excluded from routine decision making.113

Homeshaw introduces three new conceptual developments that are influential to science policy making in Australia; the international attentive public, the coordinating subgovernment and the executive core. These three concepts add another dimension to the policy community and network literature and alleviate some of the criticisms of the approaches (see Table 1.4).

As described previously, many authors acknowledge that international actors may at one time or another affect the domestic policy process. 114 Pross recognises the importance of international actors such as foreign governments, international advisory groups and multinational corporations that on some occasions participate within a policy community. 115 Homeshaw expands this by identifying these actors as the international attentive public, a major participant in the policy community. Homeshaw defines the international attentive public as

¹¹³ Ibid., 332.

¹¹⁴ See Coleman, W. and Skogstad, G. Policy Communities and Public Policy in Canada, 323; Atkinson, M. and Coleman, W. "Policy networks, policy communities and the problems of Governance", 172.

¹¹⁵ Pross, A. P. Group Politics and Public Policy, 124-125.

a network of organisations and individuals which interacts across national boundaries to influence the policy process of individual nations in areas of special interest to its members.¹¹⁶

Homeshaw's examples of actors in the international attentive science public include international environmental groups such as Greenpeace.

Throughout the policy community and network literature there is often debate over which actors do or do not make up the subgovernment. The British writers, in particular, find it difficult to come to terms with the functions of some central agencies such as Cabinet. They argue that the central agencies do not always make the most important decisions on a policy issue but are necessary for the policy to exist. Homeshaw introduces the executive core and the coordinating subgovernment to distinguish where the actors are and what functions they have in the subgovernment.¹¹⁷ She defines the executive core as

the actors in the central agencies of governments who do not make regular or routine decisions in a particular policy arena but without whose agreement crucial decisions about that policy arena could not be made.¹¹⁸

The coordinating subgovernment, on the other hand, includes a set of agencies that are specifically developed to co-ordinate policy formulation and implementation across two or more sectors of the policy community.¹¹⁹

Homeshaw's term 'executive core' should not be mistaken for Rhode's 'core executive' that exists in a policy network.

Homeshaw, J. The Transition of Australian Science Policy 1965-1990, 29. Also see Homeshaw, J. "Policy community, policy networks and science policy in Australia", Australian Journal of Public Administration 54, no.4, December 1995: 528.

Homeshaw, J. The Transition of Australian Science Policy 1965-1990, 29; Homeshaw, J. "Policy community, policy networks and science policy in Australia", 527.

¹¹⁹ Homeshaw, J. "Policy community, policy networks and science policy in Australia", 529.

Table 1.4 Categories of Actors in an Amended Policy Community Approach

Executive Core	Actors who occupy central positions in key political institutions who are not members of the policy community but without those implicit or explicit agreement key decisions about policy could not be made. e.g., non-portfolio Cabinet ministers, Cabinet officials, ministers and officials of central agencies, Prime Minister.
Coordinating Subgovernment	Actors who participate in decision-making in agencies designed to co-ordinate policy across two or more of the sectors of a policy community. Such actors are likely to be members of the sectoral subgovernments of a policy community. e.g., interdepartmental committees, allocatory agencies, minister's councils.
Subgovernment	The most influential actors in the policy community who are authorised to make both important and routine decisions in the policy arena. e.g., ministers at all levels of government, key public officials, members of advisory committees, industry associations, corporate leaders.
Attentive Public	Actors who have a special interest in a policy arena, who can influence decision-making in the subgovernment, but who do not participate in the central decision-making processes. e.g., academics, members of think tanks, State Premiers, opposition party spokespersons, specialist journalists, pressure groups.
International Attentive Public	Actors in international or single-nation organisations with interests and information in a policy arena who may be consulted by subgovernments on policy issues or who may be opposed to the politics formulated by the subgovernment. e.g., foreign governments, OECD, International Labour Organisation, Greenpeace, UNESCO.

Source: Homeshaw, J. "Policy community, policy networks and science policy in Australia", *Australian Journal of Public Administration* 54, no.4, December 1995: 530.

Homeshaw argues that the policy community approach is a useful tool as it can demonstrate the functions of a policy in either the private or public arenas. ¹²⁰ By identifying who is a decision maker and who is limited to influencing decisions assists the analyst in examining the movement of individuals, resources and ideas within the subgovernment over a long period of time. Homeshaw's three conceptual

¹²⁰ Homeshaw, J. The Transition of Australian Science Policy 1965-1990, 331.

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developments along with Pross's policy community approach are applicable to many types of policy areas and political systems.

7. Policy Change

American, British, Canadian and Australian writers all identify that the policy community and policy network concepts do not adequately explain the process of policy change. Richardson attempted to identify the causes of policy change within policy networks that have occurred within the European Union. He argues that many of the policy areas that were studied in the 1970s, 1980s and 1990s, and were considered stable networks, have gone through major change and periods of instability. Richardson reflects that many British writers during the 1970s argued that policy change occurred only when a policy community agreed upon it and there was a consensus on which direction this change would take (hence the aforementioned post parliamentary thesis).

For many years the emphasis was on the stability of the policy community and the policy network whilst the concept of 'governance' implied stable policies and relationships within a large membership.¹²³ Richardson argues that the stability that appears in some policy communities and networks, as within the policies of European states, often becomes the source of "counter tendencies which lead to the lack of control, policy instability, and unpredictable outcomes."¹²⁴ Also, the very

¹²¹ Richardson, J. "Government, interest groups and policy change", 1006.

¹²² Ibid..

¹²³ Ibid., 1009.

¹²⁴ Ibid., 1008.

success of a policy community may cause its 'erosion' over time. Interest groups increase in numbers and contribute to the changing policy environment.¹²⁵ Too many actors, as a consequence, cause unpredictable behaviour that may cease interaction to occur between some actors altogether.

Richardson argues that what sustains policy communities over time is the actors who accept defeat at one stage, hope to win an issue in the future and increase participation within the policy community. On the other hand, these actors can "seek alternative 'venues' where policy making can be influenced." This decision is dependent on the costs and benefits of the venues to the interest group.

Richardson examines the work of Baumgartner and Jones from America, who found that long sustaining interest groups can lose out to new groups in different venues and can construct new 'images' of the existing policy problems. Richardson argues that

Baumgartner and Jones see the interaction between image and venue as producing "punctuated equilibrium", whereby a period of stability is replaced by one of rapid, dramatic and non-incremental change. ¹³⁰

Moreover, he argues that policy change can occur when interest groups consciously reject the policy community approach, or when exogenous changes pose as potential

¹²⁵ Ibid.

¹²⁶ Ibid., 1011.

¹²⁷ Ibid.

¹²⁸ Baumgartner, F. and Jones, B. "Agenda dynamics and policy subsystems", *Journal of Politics* 53, no.4, 1991: 1044-1073; Baumgartner, F. and Jones, B. *Agendas and Instability in American Politics*, (Chicago IL: Chicago University Press), 1993. Also see Wilson, C. "Policy regimes and policy change", *Journal of Public Policy* 20, no.3, 2000; for further analysis of American studies into abrupt and episodic policy change.

¹²⁹ Richardson, J. "Government, interest groups and policy change", 1011.

¹³⁰ Ibid.

threats. These often come in the form of changes in policy 'fashion', ideas (especially knowledge) or policy frames. Richardson claims the new ideas have a virus like quality and have the power to disrupt existing policies, political systems and power relationships.¹³¹ Often the policy communities themselves 'mutate' to handle the virus.

Despite this insight into policy change, Richardson comes to the following conclusion:

The thrust of the argument here is that actor behaviour changes over time, as does policy, and that it can be difficult to explain this process in terms of communities and networks. These traditional institutions seem more relevant in describing how change is implemented... For explanations of how the big picture changes, we must, alas, look elsewhere. 132

8. Policy Transfer as a Model of Policy Change

Policy transfer analysis is one approach that can be used to demonstrate the processes of policy change within a policy community. Similarly to the policy community concept, policy transfer is not an explanatory theory but it can be viewed as "an analogical model". The policy transfer approach is not an inclusive model of policy development, however, it does concern itself with the features of contemporary policy change. Evans and Davies argue that

¹³¹ Ibid., 1018.

¹³² Ibid., 1022.

¹³³ Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multidisciplinary perspective", *Public Administration* 77, no.2, 1999: 363.

¹³⁴ Ibid., 367.

policy transfer is a model of policy change. It is therefore better focused on identifying processes of change than on the measurements of continuity and change which intraorganisational transfers point toward.¹³⁵

During the late 1990s, writers across disciplines began to revisit the concepts "lesson drawing", 136 "policy convergence", 137 "policy diffusion" and "policy transfer". 139

Although each concept is distinct from the other, they have some commonalities.

The concepts in one way or another all refer to how

knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system.¹⁴⁰

Policy transfer is not a process of copying or emulation. It is a deeper process of learning "about different concepts and approaches rather than specific policy designs." Policy transfer can be voluntary or coercive and this element

¹³⁵ Ibid.

¹³⁶ Rose, R. Lesson Drawing in Public Policy, (Chatham, NJ: Chatham House), 1993.

¹³⁷ Coleman, W. "Policy convergence in banking: a comparative study", *Political Studies XLII*, 1994: 274-92.

¹³⁸ Majone, G. "Cross-national sources of regulatory policy making in Europe and the United States", Journal of Public Policy 11, 1991: 79-106.

¹³⁹ The term "policy" in the concept of 'policy transfer' refers to policy programmes, legislation, policy ideas, institutional structures and administrative arrangements.

¹⁴⁰ Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", *Governance: An International Journal of Policy and Administration* 13, no.1, January 2000: 5.

Wolman, H. "Understanding cross national policy transfers: the case of Britain and the US", Governance 5, no.1, 1992: 41. Also see Stone, D. "Non-governmental policy transfer: the strategies of independent policy institutes", Governance: An International Journal of Policy and Administration, and Institutions 13, no.1, January 2000: 59.

distinguishes it from the concept of lesson drawing which assumes that the actor who is borrowing the policy has a choice.¹⁴²

Jacobs and Barnett argue that policy learning and policy transfer are also two distinct concepts. They claim that in the case of New Zealand's health task force, the policy was 'learned' from the US, and that transfer was not so evident. Other writers, such as Dolowitz and Marsh argue that there are many elements of policy that can be transferred, such as goals, content or instruments (see Table 1.5). The difficulty lies with proving that the idea was either transferred or learned. Jones and Newburn, support Dolowitz and Marsh's argument that evidence must clearly demonstrate transfer occurring.

The policy transfer approach is multilevel, multidisciplinary and researchers across disciplines contribute to the concept and its understanding. The concept itself can be used as a tool to explain a variety of situations and in conjunction with other approaches and/or theories. Evans and Davies argue that "analysts do not have the benefit of a common idiom or a unified theoretical or methodological discourse from which lessons can be drawn and hypothesis developed." Policy transfer may never

¹⁴² Rose, R. Lesson Drawing in Public Policy, 1993; Dolowitz, D., Greenwold, S. and Marsh, D. "Policy transfer: something old, something new, something borrowed, but why red, white and blue?", Parliamentary Affairs, October, 1999: 719.

¹⁴³ Jacobs, K and Barnett, P. "Policy transfer and policy learning: a study of the 1991 New Zealand Health Services Taskforce", *Governance: An International Journal of Policy and Administration, and Institutions* 13, no.2, April 2000: 210.

¹⁴⁴ Jones, T. and Newburn, T. "Learning from Uncle Sam? Exploring US influences on British crime control policy", *Governance: An International Journal of Policy and Administration, and Institutions* 15, no.1, January 2002: 104.

Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multi-disciplinary perspective", 361.

have the elements of a political theory, "however, the approach does provide an explicit framework within which one might perform an in-depth policy analysis." ¹⁴⁶

According to Dolowitz and Marsh, policy transfer literature emerged during the 1940s as a detachment of comparative politics literature. These initial studies did not focus on the actual content of policies but only on the process of policy diffusion and were criticised heavily as a consequence. The recent interest in policy transfer has resulted in studies being based more on policy content rather than process "which has provided a richer empirical insight into how policy makers learn from other jurisdictions." This focus on case studies rather than policy process is useful in determining which actors are involved in policy transfer. 150

Dolowitz and Marsh identify nine categories of actors that are involved in the policy transfer process and these include "elected officials, political parties, bureaucrats/civil servants, pressure groups, policy entrepreneurs and experts, transnational corporations, think tanks, supra-national governmental and nongovernmental institutions and consultants." Empirical studies also demonstrate

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¹⁴⁶ Greener, I. "Understanding NHS reform: the policy transfer, social learning, and path dependency perspectives", *Governance: An International Journal of Policy, Administration, and Institutions* 15, no.2, April 2002: 162.

Dolowitz, D. and Marsh, D. "Who learns what from whom: a review of policy transfer literature", Political Studies 44, 1996: 343-357.

¹⁴⁸ Jacobs, K and Barnett, P. "Policy transfer and policy learning", 187.

¹⁴⁹ Ibid

¹⁵⁰ A good example of a case study that uses the policy transfer approach is Newburn, T. "Atlantic crossings: 'policy transfer' and crime control in the USA and Britain", *Punishment and Society* 4, no.2, April 2002: 165 -194.

¹⁵¹ Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", 10.

that some actors have become increasingly influential and experts in the transfer process.¹⁵²

Whilst the empirical approach to examining policy transfer is beneficial, Dolowitz and Marsh argue that analysing the process of transfer remains an important element in understanding the concept. They first ask the following questions to establish what the processes of transfer may be:

what motivates policy makers to engage in the policy transfer process? (For example, is it ideological or practical?) Do actors get involved at different stages of the policy transfer process? When is policy transfer likely to occur within the policy-making cycle? How does the type of transfer vary depending upon when it occurs within the policy-making cycle?...Do different agents of transfer engage in different types of transfer?¹⁵³

By analysing these processes, Dolowitz and Marsh developed a conceptual framework for policy transfer (see Table 1.5).

¹⁵² Jacobs, K and Barnett, P. "Policy transfer and policy learning", 187.

¹⁵³ Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", 7.

INSERT TABLE 1.5

Dolowitz and Marsh identify which particular elements of policy can be transferred through eight categories. These include policy goals, policy content, policy instruments, policy programs, institutions, ideologies, ideas and attitudes, and negative lessons.¹⁵⁴ Their framework also demonstrates that transfer leads to policy failure when it is uniformed, incomplete and inappropriate. In addition, they distinguish between voluntary and coercive transfer.

Dolowitz and Marsh argue that in many cases policy transfer can lead to policy failure. The policy that is being transferred can often fail when implemented simply because it is not suited to the new environment. Stone raises the issue that transfer cannot occur in some cases because of the constraints and structural factors of agency and structure. The types of structure and the time of policy transfer can effect whether the transfer can even occur. 156

Despite the risks of policy failure, the actors involved in policy transfer find that innovation is increased in policy making. Policy makers become aware of what other policy makers in the international arena are doing and what progress they are making with a particular policy area. Schneider and Ingram observe that "unless the examples of other countries are brought to light through analysis, changes [to policies] will be incremental."¹⁵⁷

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¹⁵⁴ Ibid., 12.

¹⁵⁵ Ibid., 6.

¹⁵⁶ Stone, D. "Learning lessons and transferring policy across time, space and disciplines", *Politics* 19, no. 1, 1999: 51-59.

¹⁵⁷ Schneider, A. and Ingram, H. "Systematically pinching ideas: a comparative approach to policy design", *Journal of Public Policy* 8, no.1, January – March 1988: 67.

On both the domestic and international levels, policy makers are relying more on the advice of consultants or policy experts in a specific policy area.¹⁵⁸ By using consultants, governments have more time to discuss policy issues and the consultants offer expert opinions, advice and research. Dolowitz and Marsh believe that the consultants, especially in the international arena often blur the distinction between voluntary and involuntary policy transfer.¹⁵⁹ They argue that over time relationships between governments and consultants change from either voluntary to coercive, and add to a mixture of elements complicating the study of policy transfer even further.¹⁶⁰

In order to examine the voluntary and coercive nature of policy transfer, Dolowitz and Marsh use a policy transfer continuum (see Figure 1.4). They argue that by labelling a transfer as "voluntary" or "coercive" is oversimplifying the process. ¹⁶¹

Figure 1.4 From Lesson-Drawing to Coercive Transfer

Lesson-Drawing (perfect rationality)

Voluntarily (direct imposition)

Voluntarily Conditionality
but driven by
Lesson-drawing (bounded rationality)

(such as the desire for international acceptance)

Obligated Transfer (transfer as a result of treaty obligations, etc.)

Source: Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", *Governance: An International Journal of Policy and Administration* 13, no.1, January 2000: 13.

Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", 10.

¹⁵⁹ Ibid., 11.

¹⁶⁰ Ibid.

¹⁶¹ Ibid., 13.

Dolowitz and Marsh contend that this continuum assists researchers by identifying different categories to frame their empirical work and that it deepens their knowledge on the transfer process. 162 In addition, the environment is an important factor in policy transfer and actors are influenced and motivated by it. If the transfer occurs during a period of political and economical stability then it is likely to be voluntary. In contrast, if the transfer occurs in periods of political and economical instability the transfer is likely to be coercive. 163

Nevertheless, it is often difficult to tell whether the transfer has actually been voluntary or coercive. Dolowitz and Marsh admit that the distinction is often blurred, 164 and when taking into account that transfer occurs across time and space, the changes to a transfer relationship, the roles of actors and institutions can also change. This makes identifying and keeping track of policy transfer a difficult exercise. Moreover, analysts have found that this has complicated the task of formulating a policy transfer model.

Dolowitz claims that the last two decades have seen global forces impact on states and an increase in policy transfer. 165 There are two main reasons why policy transfer has increased recently. 166 Arguably, the influx of technological advances, especially in communication and media devices has resulted in easier and faster methods for

¹⁶² Ibid.

¹⁶³ Ibid., 17.

¹⁶⁴ Ibid., 11.

¹⁶⁵ Dolowitz, P. "Introduction", Governance: An International Journal of Policy and Administration 13, no.1, January 2000.

policy makers to communicate with each other. In some cases this communication can be accidental, unintentional, or secretive. This does not mean that the traditional forms of transfer that were used before the technological advances are not in effect any more. These will continue to exist, in particular within in smaller countries with less advanced economies.

The second reason why there is pressure towards policy transfer is globalisation.

The effects of globalisation can be viewed as an accessory to policy transfer and certainly why transfer literature has been revisited. As Stone reasons, however, "transfer is not necessarily the consequence of globalisation although it is likely that the frequency of transfer has increased." The pace of change is greater now than ever before and as a result, governments have looked to the political systems of other countries as a source of ideas and even legislation. On the international level, international governing organisations (IGOs) and nongovernmental organisations (NGOs) are playing a larger role in the transfer of policy and ideas. Both IGOs and NGOs, depending on the policy in question, can act as agents of both voluntary and coercive transfer. Stone argues that the role nongovernmental actors play in policy transfer is neglected in policy transfer studies.

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Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", 7.

¹⁶⁷ Stone, D. "Learning lessons and transferring policy across time, space and disciplines", 51-59.

Dolowitz, D., Greenwold, S. and Marsh, D. "Policy transfer: something old, something new, something borrowed, but why red, white and blue?", 719.

¹⁶⁹ Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", 11.

¹⁷⁰ Stone, D. "Non-governmental policy transfer: the strategies of independent policy institutes", 45-62.

policy transfer as being international foundations, independent policy institutes, NGOs and transnational social movements.¹⁷¹

Evans and Davies contend that while most political scientists find the term 'globalisation' problematic, most would agree that increased internationalisation has occurred.¹⁷² They argue that all processes can act as facilitators of policy transfer and "at the same time, policy transfer facilitates processes of globalisation...through the creation of further opportunity structures."¹⁷³ They go on to say that international regimes and epistemic communities influence state behaviour in regard to policy transfer.¹⁷⁴

Policy transfer is more than likely to become a common occurrence. "Faced with an increasingly complex and quickly changing policy environment, governments look for ready-made policy solutions; to put it another way, there is considerable pressure to look for a 'quick fix'."¹⁷⁵ Jacobs and Barnett acknowledge that "in practice, policy

¹⁷¹ Ibid., 45.

¹⁷² Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multidisciplinary perspective", 369.

¹⁷³ Ibid., 371.

¹⁷⁴ Ibid.; The work on international regimes, international governance and epistemic communities is useful in the further examination of policy transfer on the global level. As this chapter is more concerned with policy transfer as tool to work in conjunction with the policy community approach, regime analysis and the epistemic community approach will not be explored. For more information on these areas see Haas, P. ed., "Knowledge, power and international policy coordination", Special Issue of *International Organisation*, 1992; Higgot, R. "Beyond embedded liberalism: governing the international trade regime in the era of economic rationalism", in Gummett, P. ed., *Globalisation in Question*, (Cambridge: Polity Press), 1996; Young, O. "Regime Dynamics: the rise and fall of international regimes", *International Organisation* 36, no.2, Spring 1982.

Dolowitz, D., Greenwold, S. and Marsh, D. "Policy transfer: something old, something new, something borrowed, but why red, white and blue?", 728.

making is a messy process in which different policy solutions and problem streams combine for a particular policy to develop."¹⁷⁶

Therefore, it is often difficult to establish whether policy transfer has actually occurred. As Dolowitz, Greenwold and Marsh put it, "Governments do not provide convenient lists of what they borrow, or from where they borrow." Policy decisions that are made in one country that happen to be similar to those of another do not necessarily mean that this is actual proof of policy transfer. In order to rectify actual proof of transfer, Evans and Davies propose the following sequence of steps. The first is the subject of analysis followed by evidence of a non-transfer. Following this, Evans and Davies ask whether there is evidence to support the claim of a transfer and how good this evidence is. The last step they identify is what conclusion can be drawn from the transfer that has taken place.

9. Policy Transfer Networks and the Policy Community

Evans and Davies suggest that the policy transfer concept is a useful analytical tool that can be used in conjunction with other approaches such as the policy community or network.¹⁷⁹ The policy transfer concept is flexible, adaptable and can be used on global, international, and transnational levels; between regions on the domestic level

¹⁷⁶ Jacobs, K and Barnett, P. "Policy transfer and policy learning", 207.

Dolowitz, D., Greenwold, S. and Marsh, D. "Policy transfer: something old, something new, something borrowed, but why red, white and blue?", 719.

¹⁷⁸ Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multidisciplinary perspective", 383.

¹⁷⁹ Ibid.; an example when used with other approaches is Greener, I. "Understanding NHS reform: the policy transfer, social learning, and path dependency perspectives", 161-183;

and on the inter-organisational level.¹⁸⁰ The transfer approach does not assess where actors are at a particular point in time or what their general relationship is with one another and this is where the policy community model is useful. Nevertheless, policy transfer can occur across time and across space¹⁸¹ and this is one element that the policy community approach fails to demonstrate. In order to conceptualise the notion that transfer occurs across time and space, Evans and Davies argue that at the time of change a 'policy transfer network' is formed.

Evans and Davies believe that policy transfer networks

are an ad hoc phenomenon set up with the specific intention of engineering policy change and thus no extensive process of bargaining or coalition building external to the transfer network is usually required...Policy transfer networks provide a context for evaluating the complex interaction of state and international policy agendas forged through the interaction of state, non-state, transnational and international actors.¹⁸²

Additionally, the policy transfer networks only exist when the transfer is occurring. Without the assistance of a policy transfer network another policy may be adopted by the policy makers.

When governments (local, regional, national or supranational) engage with these networks, it reflects an interaction between (1) the need to satisfy objective policy problems, (2) gaining access to other organisational networks, (3) further relevant motivating values (regime-pull, discourse-pull, ideological factors), and (4) providing certain essential skills and knowledge resources.¹⁸³

¹⁸⁰ Jacobs, K and Barnett, P. "Policy transfer and policy learning", 187; Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multidisciplinary perspective", 367.

¹⁸¹ Stone, D. "Learning lessons and transferring policy across time, space and disciplines", 51-59.

Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multidisciplinary perspective", 376.

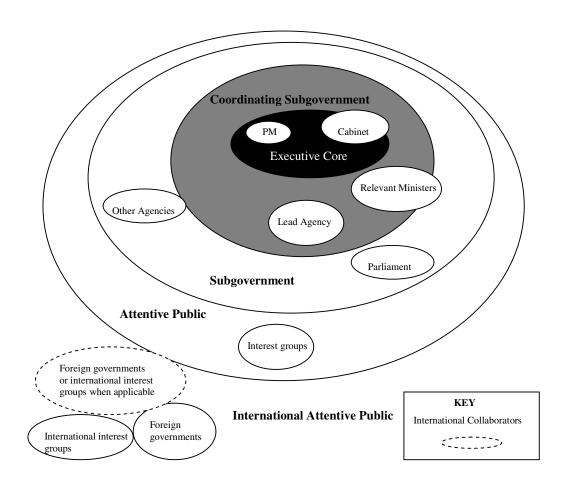
¹⁸³ Ibid.

When married together, policy transfer analysis alleviates three major shortcomings of the policy community approach. The first is that change to a policy community can be a result of external influences. Second, the existence of a policy transfer network can illustrate why spontaneous issue groups enter and exit a policy community. Pross argues that spontaneous issue groups appear within a policy community and this often causes 'shock waves' and can change the dynamics of the community. What Pross does not explain is why these spontaneous issue groups appear. The policy transfer network demonstrates that the groups appear to engineer change, and then when the transfer is finished they disappear. Evidently, this explanation is limited to the occasion when transfer is the cause of policy change. The last weakness of the policy community approach is its failure to recognise that globalisation can affect policy decisions and policy change within a policy community.

The term international attentive public introduced by Homeshaw to policy community analysis indicates that the international actors are merely observers in the policy community. However, as the policy transfer literature illustrates, observation is only one reason why the international actors take interest in or involve themselves in a policy community. What do the international actors do with the information they gather from their observations? It can be presumed they are involved in the first steps towards some form of policy transfer. It is for these reasons that the dimensions of the term international attentive public need reviewing. As a subcategory of the international attentive public, the term *international collaborators* demonstrates that some international actors are involved in policy development

decisions and possibly agents of policy transfer. For an example of policy community that utilises the conceptual developments of Pross, Homeshaw and the new subcategory of international collaborators see Figure 1.5.

Figure 1.5 The Amended Policy Community



Stone persists that international actors, especially think tanks, have specific roles in the policy community and the policy transfer network. She finds that

elite networking and interaction via transnational policy communities is another route of policy transfer. It is also the dynamic through which think tanks are most visible. Policy transfer occurs when transnational groups of actors share their expertise and information and form common patterns of understanding regarding policy. It requires regular interaction of experts and practioners at the international level, such as through conferences and government delegations, and sustained communication. A consequence is the development of common views and policy perspectives among an identifiable elite of people who work in a given field.¹⁸⁴

She argues that think tanks are likely to be awarded an 'insider status' of policy communities if they share their common values and attitudes.¹⁸⁵

10. Other Avenues of Change within the Policy Community?

Richardson claims that the policy community and network approaches are limited in explaining policy change. A transfer network can demonstrate how change occurs within a policy community and what relationships are formed between the actors to accomplish this change. What Evans and Davies stress is that the transfer networks only exist for the time that transfer is occurring. Consequently, the policy community remains relatively stable despite a shift in actor relationships for the period of transfer.

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¹⁸⁴ Stone, D. "Non-governmental policy transfer: the strategies of independent policy institutes", 50.

¹⁸⁵ Ibid.

This examination leads to the one major difficulty with the analysis of the two approaches. How can change within a policy community be explained when policy transfer has not occurred? It can be argued that a *change network* appears in the policy community that is similar to a transfer network. It also exists with the intention of engineering policy change and only exists while the change is taking place. The main difference, however, between the two networks is that the change network is not in the midst of transferring policy.

As Table 1.6 demonstrates, the change network has a limited membership where the actors involved have a shared set of casual beliefs specifically geared to achieve change at that point in time. Power is unequal in the change network due to the different categories (executive core, coordinating subgovernment and so on) within a policy community. Nonetheless, actors from all categories can take part in the change network. Whilst the actors have economic or professional interests during periods of stability within the policy community, once they take part in the change network their intensions become altered so that their main priorities are to engineer policy change.

INSERT TABLE 1.6

11. Conclusion

This chapter has introduced the key concepts that make up the framework that is used to analyse the development of *Australia's Oceans Policy*. The policy community, policy transfer and change network concepts when used in conjunction alleviate each other's limitations. The concepts provide an analytical tool to explore which actors are involved in the oceans policy development process, what extent of integration occurs between relationships and how they contribute to policy change.

The chapter has argued that the roles of international actors that make up the international attentive public in the policy community are more complex than researchers have initially claimed. Policy transfer literature has revealed that international actors that become involved in the process of transfer can also be members of a transfer network. The international actors, or international collaborators, involve themselves in policy decisions and contribute to policy outcomes. In addition, they can clearly partake in change networks that constitute change in the policy community.

This thesis now turns to examine the origins of oceans policy development from Federation until 1990. During this period, the Commonwealth went from little interest in policy making in ocean and marine resource issues to taking assertive policy action. The states, on the other hand, had initial control over offshore and marine resource matters stemming from colonial responsibilities and were faced with assuming a protective role of their interests from the Commonwealth. This period

also explores the origins of sectoral approaches to ocean and marine resource management in Australia.

CHAPTER TWO

Ocean and Marine Resource Management: Federation to 1990

1. Introduction

Since Federation in 1901, Australia has developed and implemented ocean and marine resource policies that have provided the legislative basis for the development of *Australia's Oceans Policy*. The Act of Federation provided for a clear distinction between the Commonwealth, state and Territory jurisdictional responsibilities. The states were, and continue to be, responsible for activities relating to the administration of ocean and marine resources whilst the Commonwealth powers are limited to regulating fisheries beyond territorial limits and external affairs. This chapter examines the application of the Commonwealth's powers, as outlined by Section 51 (x) and (xxix) of the Constitution, to ocean and offshore resource issues. It is argued, nonetheless, that despite the Commonwealth's increasing interest in policy making in this area its approach has been 'leisurely' and 'orthodox'. 2

The period from Federation until 1990 reveals two key elements that underpin policy making in ocean and marine resource management in Australia. First, this period unveils the progressive jurisdictional disputes between the Commonwealth and states

¹ White, M. Marine Pollution Laws of the Australasian Region, (Sydney: The Federation Press), 1994, 7.

² Burmester argues that the Commonwealth has been orthodox in its approach in linking ratified international agreements to domestic policy. See Burmester, H. "Australia and the Law of the Sea", in Crawford, J. and Rothwell, D. eds., The *Law of the Sea in the Asia Pacific Region*, (The Netherlands: Martinus Niijhoff Publishers), 1995, 51.

over offshore matters. The height of intergovernmental conflict is demonstrated through the enactment of the *Seas and Submerged Lands Act* 1973 where the Commonwealth asserted jurisdictional control from the low water mark, which until this had been under the control of the states. Following a High Court Case in the Commonwealth's favour, the Commonwealth and states then entered negotiations and agreed upon the Offshore Constitutional Settlement (OCS) where the states regained their original jurisdiction from the low water mark to the three nautical mile boundary through the legislative arrangements.

Second, this period illustrates how management of ocean and marine resources was established through individual sectors, in particular the fishing and offshore oil and petroleum mining sectors. Both jurisdictional and sectoral divides were reinforced during the OCS negotiations and this chapter analyses the development and implementation of the OCS and its sector based 'packages'. Although policy development and implementation in the administration of offshore and marine resources during this period was a disjointed, *ad hoc*, process the OCS has become known as a milestone for intergovernmental relations in Australia.

The first part of this chapter examines the legal and Constitutional framework in the context of ocean and marine resource issues. It briefly explores the political environment prior to Federation and how this enabled the states to retain responsibility over the administration of ocean and marine resources.

Intergovernmental relations and institutions are also analysed with a particular focus on how they shaped the decision making processes in the development of oceans policies in Australia during this time period.

2. The Constitution, Federalism and Intergovernmental Relations

Prior to Federation in 1901 the individual colonies were functioning entities for at least forty years and had developed a "sense of national community in Australia." Each colony participated in the drafting and ratification of the Constitution document. The *Constitution of Australia* outlines the division of powers between the Commonwealth, six states and two territories.

The states retained a majority of the powers and responsibilities over marine resources that were established during colonial rule.⁴ The Commonwealth powers are limited to external affairs, defence, "suasion towards common standards and the provision of funding for various conservation and development programs." The Commonwealth also has concurrent powers with the states that allows for shared responsibility horizontally and vertically across governments over maritime issues.⁶

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³ Cullen, R. Federalism in Action: The Australian and Canadian Offshore Disputes, (Annandale: Federation Press), 1990, 57.

⁴ Advisory Council on Inter-governmental Relations, *Studies in Comparative Federalism, Australia, Canada and West Germany – An Information Report*, (Washington DC), November 1981.

⁵ Davis, B. "National responses to UNCED outcomes: Australia", in Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., Oceans Law and Policy in the Post-UNCED Era: Australian and Canadian Perspectives, (London: Kluwer Law International) 1996, 26.

⁶ Mathews, R. ed. *Responsibility Sharing in a Federal System*, (Canberra: Australian National University), 1975, xvii.

The Commonwealth does have exclusive powers, as outlined in Section 51 of the Constitution, that apply to Commonwealth activities over the offshore. The subsections that have particular relevance to these activities are as follows:

- 51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: -
- (x) Fisheries in Australian waters beyond territorial limits;

(xxix) External affairs;

(xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but also that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopts the law;

(xxxviii) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australia;

(xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.⁷

The Commonwealth therefore has the power to make laws in accordance to 'fisheries beyond territorial limits'. Despite this, it did not pursue policy making over maritime issues for many years for two underlying reasons.⁸ First, Australia

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⁷ The Constitution of Australia, Section 51, Part (x) – (xxxix).

⁸The 'territorial limit' refers to a distance three nautical miles from the low water mark. One nautical mile is equivalent to 1.852 kilometres. See Kaye, S. "Federal-state relations offshore", in

although self governing, followed the policy directions of the British Empire and British law continued to influence debates over the offshore. Second, the Commonwealth accepted the view that the states had control over waters in the three mile limit and did not find it necessary to be involved. The Commonwealth believed that their jurisdiction was limited to "the constitutional arrangements for territorial waters, and international law for those waters beyond." Consequently, as the Commonwealth became more involved in offshore activities, the states disputed the validity of the phrase "territorial limits". 11

Although the Commonwealth has limited powers that directly relate to ocean, coastal or marine activities, it is the Commonwealth's indirect powers that have influenced policy making in this area. In particular, Section 109 of the Constitution has been utilised by the Commonwealth during intergovernmental disputes. Section 109 clarifies the concurrent legislative powers and ensures that in any event of conflict between state and Commonwealth law, the Commonwealth will prevail. The state law is therefore invalid to the extent of the inconsistency. ¹² In the event of a dispute between the Commonwealth and the states, the High Court of Australia has the

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McKinnon, D. and Sherwood, D. eds. *Policing Australia's Offshore Zones: Problems and Prospects*, (Centre for Maritime Policy: University of Wollongong), 1997, 226.

⁹ Haward, M. "The offshore", in Galligan, B., Hughes, O. and Walsh, C. eds., *Inter-Governmental Relations and Public Policy*, (Sydney: Allen and Unwin), 1991, 111.

¹⁰ Kaye, S. "Federal-state relations offshore", 226.

¹¹ Several court cases have also raised issues related to "territorial limits" and the jurisdictional boundaries of the states and the Commonwealth. Two of these cases include *Bonser* v *Macchia* (1968-1969) 122 CLR 177 and *Raptis* v *Australia* (1977) 138 CLR 346.

Saunders, C. "Inter-governmental Relations and Public Policy", in Galligan, B., Hughes, O. and Walsh, C. eds., Inter-governmental Relations and Public Policy, 43; Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia (PhD thesis, University of Tasmania), 1998, 14.

power to determine a suitable outcome.¹³ Notably, the High Court plays a critical role in setting the framework for intergovernmental interaction through its interpretations of the Constitution, however, "it is not the major actor in intergovernmental relations".¹⁴

Whilst the Constitutional and legal framework provides the basis to understanding the Commonwealth and states' actions over offshore matters after federation, the intergovernmental practices and institutions are key instruments in the development of ocean and marine resource policies in Australia. The Australian federal system is unique in that it has a number of institutional arrangements that specifically affect or influence intergovernmental policy negotiations. These include the Grants Commission, the Premiers' Conference, and in the 1990s the Council of Australian Governments.¹⁵

¹³ A case that tested the validity of Section 109 was *Commonwealth* versus *Tasmania* (1983) ALR 625 (Also known as The *Franklin Dam Case*). The High Court ruled in favour of the Commonwealth and stopped the Tasmanian government from flooding a World Heritage Convention Wilderness area. This case is important to intergovernmental relations for a number of factors as it demonstrated that in the event of a dispute, Commonwealth law does override state authority. It also clarified that the Commonwealth will use its external affairs powers as leverage in an intergovernmental dispute and that it "can extend its legislative capabilities by following international treaty obligations." See Evans, N. *Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia*, 20; Cullen, R. *Federalism in Action: The Australian and Canadian Offshore Disputes*, (Annandale: Federation Press), 1990, 99.

¹⁴ See Sharman, C. "Executive Federalism", in Galligan, B., Hughes, O. and Walsh, C. *Inter-Governmental Relations and Public Policy*, (Sydney: Allen and Unwin), 1991, 25.

The Advisory Council of Inter-governmental Relations was another institution, established in 1976, that was designed to improve the communication and cooperation between the levels of government. The Council was abolished in 1987 as it "identified with views on local government that clashed with those of members of the Premiers' Conference". See Sharman, C. "Executive Federalism", 30; and Advisory Council on Inter-Governmental Relations, Studies in Comparative Federalism, Australia, Canada and West Germany – An Information Report.

The heads of governments meetings predate Federation and the Premiers'

Conference has become a long established tradition. The Conference on most occasions includes formal presentations by the Prime Minister and each of the states' Premiers followed by two days of private and informal discussions. Sharman argues that historical accounts of the Premiers' Conferences have demonstrated that they may appear to deal with intergovernmental issues, however, their "major function...is political and symbolic rather than administrative."

The first intergovernmental debates over offshore resources began during the 1940s when the Commonwealth began to pursue its interests over maritime issues after the Second World War. A decision to establish a Commonwealth Fisheries Agency was agreed upon during the Premiers' Conference in 1946. Initially, the states were not in favour of the decision however, two factors influenced the states to agree to the use of the Commonwealth's powers over fisheries beyond territorial waters. First, fishing activities were expanding beyond the three nautical mile limit and deep sea trawl fisheries were being developed. Second, international interests in high seas fisheries were increasing.¹⁸ The states did resist the legislation that followed, however, the Commonwealth passed the *Fisheries Act* 1952 and it became the "first legislative base for formal intergovernmental relations offshore."¹⁹

¹⁶ Sharman, C. "Executive Federalism", 27.

¹⁷ Ibid

¹⁸ Haward, M. "The offshore", 109.

¹⁹ Ibid., 111.

3. Fisheries

3.1 Pre-Federation to Commonwealth Fisheries and Pearl Fisheries Acts 1952

Fishing was an important colonial activity prior to federation and each colony established its own fisheries policies. Fisheries practices were codified by the *Federal Council of Australasia Act* 1883 and were first implemented by Queensland and Western Australia. The Federal Council of Australasia's²⁰ power over waters beyond territorial limits was adopted into the draft Constitution Bill at the First Australasian Constitutional Convention in Sydney, 1881.²¹ This provision became the basis to Section 51 (x) although it was subject to amendments in 1898. During the meetings of the Convention, this power received very minimal attention.²²

Nevertheless, the Federal Council of Australasia had the power to legislate in respect to British subjects fishing in waters beyond the three mile territories of the colonies.²³ During the development of the Constitution, fishing activities were located inshore, and offshore fishing was mainly located in shallow water. Although

²⁰ "The Federal Council of Australasia was set up by the [British] Imperial Act 1885 with power to legislate with respect to British subjects fishing in 'Australian' waters outside the territorial waters of the colonies." See O'Connell, D. "Australian coastal jurisdiction", International Law in Australia, (Sydney: Law Book Company), 1965, 255.

²¹ O'Connell, D. "Australian coastal jurisdiction", 246-256.

Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims", *Marine Policy* 20, no.1, 1996: 32; Crommelin, M. *Offshore Mining and Petroleum: Constitutional Issues*, (Melbourne: Melbourne University Law School), 1981.

²³ O'Connell, D. "Australian coastal jurisdiction", 255.

fishing beyond territorial limits for sedentary species had already commenced, the extent of future use of the offshore was not anticipated.²⁴

During the Adelaide meeting of the Constitutional Convention in 1897, discussions were centred on the wording of Section 51 which "was directed solely to the policing of federal control of inland fisheries and no reference was made to territorial waters." During the following meeting of the Convention in Sydney, delegates debated the wording of the fisheries power and settled on "(xii) Fisheries in Australian waters beyond territorial limits". Discussions continued to find an adequate definition of 'Australian waters'.

The fourth meeting of the Convention was held in the Melbourne early in 1898 and discussions focused on colonial jurisdiction over territorial waters. Edmund Barton proposed an amendment to the *Commonwealth Constitution Bill* 1891 to reword the fisheries power as "Sea fisheries in Australian Waters." Barton's suggestion was rejected for fear that the states had the potential to lose control of their fisheries. Instead, the wording of the Constitution remained as 'beyond territorial limits'.

²⁴ Campbell, E. "Regulation of Australian Coastal Fisheries", *Tasmanian University Law Review* 1, 1960: 256.

²⁵ Ibid

²⁶ Harrison, A.J. The Commonwealth Government in the Administration of Australian Fisheries: A Sort of Mongrel Socialism, National Monograph Series, no.6, (Royal Institute of Public Administration), 1991.

²⁷ Official record of the debates of the *Australasian Federal Convention Fourth Session*, 1898, page 1855.

Campbell argues that it was taken for granted that colonial legislation was competent enough to govern all aspects of fisheries within the three mile zone.²⁸

The pearl fishery was an established sector of the fishing industry that had taken control of areas beyond the territorial limit and was managed by the colonies during the late 1800s. The Federal Council, under the *Imperial Act* exercised power by legislating for waters past the territorial limits. During parliamentary debate in 1889, Sir John Forrest stated to Mr Deakin and Mr Barton,

Western Australia and Queensland have both Acts of the Federal Council which have been very useful in controlling fisheries, such as the pearl fisheries, far beyond the three mile limit.²⁹

The debate concluded with the states regaining control of fisheries to the three mile limit, even though parties involved were aware of the pearl fishing activities beyond the territorial limits. It is noteworthy to add that during the time of such discussions, the Council believed that it had little use for the waters beyond the territorial limits and permitted the states to continue administrating fishing activities in Australian waters.

The draft Constitution was assented to by Queen Victoria in 1900. Harrison argues that the fisheries position during this time was that

1) There can be no doubt that the colonies (and later the states) could, and did, legislate to control fisheries within three miles

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²⁸ Campbell, E. "Regulation of Australian Coastal Fisheries", 408.

²⁹ Commonwealth of Australia Bill, 3 March 1889.

of their coasts. 2) This legislative competence was not considered to be extra-territorial in nature. 3) [It was] acknowledged that the colonies were not sovereign entities, thus, the specific support of the Imperial Parliament was needed to exert extra-territorial authority. 4) The granting of this extra-territorial authority was considered to be a concession to Australia. 5) Queensland and Western Australia had exerted some control over fisheries on the high seas but it had not affected any other sovereign power and it was confined to fishing for sedentary species. 30

Interest in further developing the Australian fishing industry emerged during a conference between the Commonwealth and states in 1907.³¹ The national conferences in 1927 and 1929 also focused on the extent of Commonwealth involvement in fisheries beyond territorial limits. During 1929, a Royal Commission Report on the Constitution³² found that major trawl fisheries were operating up to twenty miles off the New South Wales coast and deep sea fisheries had been discovered in the Great Australian Bight.³³ The Commission recommended that the Constitution should be altered to give full power over Australian fisheries to the Commonwealth. During the conference it was also suggested that a Commonwealth agency be developed to manage fisheries. Nevertheless, the recommendations were ignored.³⁴

³⁰ Harrison, A.J. The Commonwealth Government in the Administration of Australian Fisheries.

³¹ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, (PhD thesis, University of Tasmania), 1992, 82.

³² Commonwealth of Australia, *Report on the Royal Commission on the Constitution*, (Canberra: AGPS), 1929.

³³ Harrison, A.J. The Commonwealth Government in the Administration of Australian Fisheries.

³⁴ Ibid.

The Commonwealth's *Beaches, Fishing Grounds and Sea Routes Protection Act* was passed in 1932, however, this legislation had little impact on Commonwealth activities in fisheries and was primarily concerned with regulating dumping waste at sea.³⁵ Similarly, the Commonwealth's *Whaling Act* 1935 only dealt with the regulation of whaling in Australian waters. The impact of the Second World War focused the attention of the Commonwealth on other policy matters. During the 1946 Premiers' Conference the first Commonwealth fisheries authority was developed and was allocated to the Commonwealth Department of Commerce and Agriculture.³⁶

During these early years of Commonwealth fisheries policy development, ocean resources were under a common threat of the 'tragedy of the commons'.³⁷ Harrison describes an incident that illustrates the state of fishing activities during the period following the Premiers' Conference.

It seems that the principle factor contributing to this perceived need for overlapping of control was a belief, fostered by the Commonwealth authority, and probably accepted by at least some state fisheries authorities, that the states had no powers to control fishing activities beyond three miles. Thus we read in the official publication of the Commonwealth authority...in October 1947,³⁸ which says that the need for Commonwealth legislation has been "forcibly illustrated" by a Sydney newspaper report of a "deep sea fisherman's shooting war". Apparently small boat fishermen from Terrigal (New South Wales), operating beyond three miles, claimed to have been

³⁵ Harrison, A.J. "Marine living resources policy in Tasmania", in Herr, R., Hall, R., and Davis, B. eds., *Issues in Australia's Marine and Antarctic Policies*, (University of Tasmania), 1982.

³⁶ Ibid., Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 83.

³⁷ See Hardin, G. "The tragedy of the commons", *Science* 162, 1968, 1243-48. Hardin's essay outlines the difficulties of managing a common good.

³⁸ Department of Commerce and Agriculture, "Editorial", Fisheries Newsletter, October 1947.

rammed by a larger trawler and as a result shots were fired. There is no indication that the fishermen concerned were not all residents of New South Wales and yet there arose from that incident a belief that because no Commonwealth fisheries legislation existed no action could be taken.³⁹

As a consequence, the decision was made by the Commonwealth to enact fisheries legislation. The proposal for fisheries legislation first arose during the Commonwealth and State Fisheries Conference in 1947. The Commonwealth stressed that it wanted to help the states and not take over their responsibilities. The legislation was not introduced for a number of years until the state and Commonwealth governments agreed on their respective roles. Although it passed through the Senate in 1952, the *Commonwealth Fisheries* and *Pearl Fisheries Acts* were not proclaimed until 1955 when the major intergovernmental issues were resolved. Both Acts initially asserted limited sovereignty over the Australian continental shelf and were intended "to exert authority only in the international sense."

The *Pearl Fisheries Act* was established to regulate the waters that extended to the continental shelf. Notably, there was limited discussion as to what constituted the 'continental shelf', yet it was agreed that the Commonwealth was the appropriate jurisdictional authority to regulate the Pearl fishery. The aim of the legislation was to limit and control all the Australian sedentary fishing activities, in particular the harvesting of pearls, beyond three miles. The Japanese pearl fishermen protested

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³⁹ Harrison, A.J. "Marine living resources policy in Tasmania".

⁴⁰ Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 44.

strongly against the Act "and the impositions it made in terms of access to the continental shelf." As a result of these discussions with the Japanese, Australia argued during the Convention of the Continental Shelf that the definition of the shelf should include all natural resources. Australian delegates discovered during the Convention that their argument was strongly supported by other nations. 42

The *Fisheries* and *Pearl Fisheries Acts* reinforced the notion that the Commonwealth had jurisdictional responsibilities beyond territorial limits. Up until 1952, it can be argued that the Commonwealth chose not to legislate on fisheries as it had reasonable faith in state policy.⁴³ The *Pearl Fisheries Act* demonstrated Australia's independence from Britain in policy making with regard to sedentary fisheries issues in Australian waters and resulted in a sense of 'national ownership' of ocean and marine living resources. The *Fisheries Act*, on the other hand, was a response to the pressure exerted on the Commonwealth from the states who were concerned about the fishing activities beyond the territorial limits.⁴⁴

Of particular concern to the states was the Japanese fishing industry that targeted 'swimming' fish (also known as pelagic fish) such as the Southern Bluefin Tuna.⁴⁵

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⁴¹ Ibid., 52.

⁴² Bailey, P. "Australia and the Geneva Conventions on the Law of the Sea", in O'Connell, D. ed., *International Law in Australia*, 228-245.

⁴³ Herr, R. and Davis, B. *Federalism and the Law of the Sea: Issues and Practice in Australian Fisheries Policy*, A paper presented at the Federalism Seminar, Research School of Social Sciences, (Canberra: Australian National University), 11-12 February 1982.

⁴⁴ Byrne, J. "The decision making structure for fisheries management. The role of Government and states, and Commonwealth Authorities", *Australian Fisheries Conference*, (Canberra), January 31 - February 2, 1985, 1.

⁴⁵ Scott, S.V. "Australia's first tuna negotiations with Japan", *Marine Policy* 24, 2000: 310.

Japanese poaching activities also created bitter feelings for the Australian fishing industry. These feelings were exacerbated when Japanese fishing vessels gained access to Australian Ports under false pretences. Scott argues that the majority of emergency reasons used by the Japanese to gain access to ports were in reality "unrelated to emergency or distress." Interestingly, the Commonwealth did not hold talks with Japan on pelagic fisheries when the *Fisheries Act* became effective. The Commonwealth found that although it would have liked to enter into negotiations with Japan over fisheries, "it was well aware that it was without a basis in international law on which to require the Japanese to accept any limitations on their operations beyond the territorial sea."

The Commonwealth did finally take action on fisheries matters beyond territorial limits through the *Continental Shelf (Living Natural Resources) Act* 1968. The Act was enacted for two distinct purposes, first it ensured that the ratified principles from the 1958 *Convention of the Continental Shelf* were translated into domestic policy. The Commonwealth sought to uphold international agreements while it legislated on domestic issues. Second, it brought the continental shelf under "Commonwealth jurisdiction for the purposes of conserving fish resources" and by doing so, it replaced the *Pearl Fisheries Act* 1952. During the Premiers' Conference in 1979, a new fisheries agreement was reached and the Offshore Constitutional Settlement was

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 93.

launched (see later details).⁴⁹ The Commonwealth's *Fisheries Act* 1952 was repealed in 1991 by the *Fisheries Legislation (Consequential Provisions) Act* which provides for the operation of the *Fisheries Management Act* 1991.⁵⁰

3.2 The Development of Commonwealth Fisheries Administration

The fishing industry in Australia had developed in an *ad hoc* manner with divisions across jurisdictions and also within the industry. Haward argues that

a major influence on the development of fisheries policy, and the management of particular fisheries is the diversified and decentralised nature of the Australian fishing industry. The sectoral split within the industry is the most obvious example of this.⁵¹

The Australian Fisheries Council (AFC) and a number of Commonwealth/state advisory committees were established during the Premiers' Conference in 1960. The establishment of the AFC has been labelled as "a major landmark" and "a positive move towards the coordination of fisheries management in Australia." The AFC was made up of state and Commonwealth ministers and was created to provide a mechanism for intergovernmental coordination on fisheries matters. Although the AFC increased Commonwealth involvement in fisheries matters, the day to day fishery management practices continued to be controlled by the states.

⁵⁰ Bergin, A., Haward, M., Russell, D. and Weir, R. "Marine living resources", in Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., *Oceans Law and Policy in the Post UNCED Era: Australian and Canadian Perspectives*, (London: Kluwer Law International), 1996, 176.

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⁴⁹ Byrne, J. "The decision making structure for fisheries management", 2.

⁵¹ Haward, M. *Political Constraints on Fisheries Management*, Paper Prepared for the National Officers Course, (Australian Maritime College), 1998.

⁵² Herr, R. and Davis, B. "The impact of UNCLOS III on Australian Federalism", *International Journal* XLI, Summer 1986: 684.

The first meeting of the AFC did not eventuate until 1968, and this delay reflected the level of intergovernmental difficulties in ocean related policies during this period. The advisory committees comprised of senior managers and scientists from Commonwealth and state agencies and were set up under the umbrella of the AFC. The aim of the committees was "to coordinate Commonwealth, state and Territory control over fishing." Nevertheless, the committees within the AFC failed to prevent diversion and conflict between states, and between the Commonwealth and the states. 56

This prompted the Commonwealth to become more active in fisheries management and by the mid 1970s the states had formed advisory committees "with strong industry representation to advise the respective agencies and/or government on fisheries matters." The states encouraged the fishing industry to avoid consultation with the Commonwealth, and as a result, many of the fisheries that transcended the three mile limit were left unmanaged. 58

The Australian Fishing Industry Council (AFIC), a national industry organisation was also established in 1968.⁵⁹ The AFIC focused on intergovernmental

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⁵³ Byrne, J. "The decision making structure for fisheries management", 1.

⁵⁴ Haward, M. Federalism and the Offshore Constitutional Settlement, 89.

⁵⁵ Byrne, J. "The decision making structure for fisheries management", 1.

⁵⁶ Ibid.

⁵⁷ Ibid., 2.

⁵⁸ Ibid., 1.

⁵⁹ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 90.

cooperation, similarly to the AFC, and was endorsed by the Commonwealth

Department of Primary Industries. Herr and Davis argue that this departmental
support was 'unusual' as the Commonwealth was taking "deliberate steps to foster
the growth of the national industry body, in part to help legitimate the growing use of
Commonwealth fisheries powers." The states had little support for another

Commonwealth agency and this became the source of some internal frictions
between fishermen and industry officials. The AFIC's difficulties were further
extended by the lack of funding which caused difficulties between government and
industry. As a result, the AFIC was not a powerful player in fisheries management.

During 1983, the Interim Fishing Industry Panel was formed and was chaired by the Minister for Primary Industry to oversee the implementation of the Fisheries package that was decided upon during the Offshore Constitutional Settlement. Shortly after, the National Fishing Industry Council (NFIC) replaced AFIC following the Australian Fisheries Conference held in February 1985. The aim of the Conference was to establish an "effective, independent representative voice of the Australian Fishing industry." Recommendations of the Conference included that the National Fisherman's Association, National Marketers and Processors Association, and Association of National Industry Associations be represented by the NFIC. The

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⁶⁰ Herr, R.A and Davis, B.W., "The impact on UNCLOS III on Australian Federalism", 684.

⁶¹ Bain, R. "Commonwealth fisheries policies: problems, priorities and progress", *Australian Fisheries* 43, no.8, August 1984: 15.

⁶² Commonwealth/Industry Consultation Taskforce, *Australian Fisheries Conference - Report to Industry*, 1985, 6.

⁶³ The NFIC has since been replaced by the Australian Seafood Industry Council.

forum for the Minister of Primary Industry and the Australian Fisheries Service with fishing industry officials.

The Commonwealth found that the existing fisheries agencies were not adequately equipped to deal with the rapid industry growth. Consequently, the Australian Fisheries Management Authority (AFMA) and the Fishing Industry Policy Council of Australia (FIPCA) were established in 1992 through the *Fisheries Management* and *Fisheries Administration Acts* 1991. FIPCA was to be responsible for advising the Commonwealth minister on fisheries related issues, however, it was never instituted. Interestingly, the Commonwealth Fisheries Policy Review released in 2003 prepared a similar policy forum.

AFMA is responsible for the day-to-day management of Commonwealth fisheries and consults with the Management Advisory Committees (MACs) over fisheries management.⁶⁴ The Department of Agriculture, Fisheries and Forestry Australia (AFFA) is responsible for broader fisheries policy, international negotiations and strategic issues.⁶⁵ The level of industry growth is demonstrated through the Australian Bureau of Agricultural and Resource Economics (ABARE) statistics which estimated that in 1991-1992 the value of the Australian fishing industry was

⁶⁴ Polson, G. "Implementing UNCLOS: evolution of national fisheries legislation and management structures", Paper presented in Panel II (Governments and Fisheries: Laws, Agreements and Arrangements) at the *Thirtieth Annual Conference of the Law of the Sea Institute*, (Al Ain, United Arab Emirates), 19-22 May, 1996; Bergin, A., Haward, M., Russell, D. and Weir, R. "Marine living resources", 176.

⁶⁵ AFMA, "About AFMA", http://www.afma.gov.au/about%20afma/default.php, Date last modified: 2001; Date accessed: Monday 26 May 2003.

approximately A\$1.7 billion and in 2001-2002 the value increased to approximately A\$2.5 billion.⁶⁶

4. Offshore Oil and Petroleum Mining

4.1 The Offshore Policy Developments During the 1960s

Prior to the 1960s, the Commonwealth had little interest and was "clearly inexperienced" in the management of offshore oil and petroleum resources and "displayed little inclination to move in this direction." The discovery of hydrocarbon reserves in the Gippsland Basin area of the Bass Strait by Broken Hill Propriety Company Ltd., and Esso Exploration and Production Australia Inc., prompted the Commonwealth to take further interest in the offshore. 68

The Commonwealth became involved in offshore matters as a result of the financial incentives it provided to stimulate offshore exploration. This led to discussions between the Commonwealth and the states with regard to revenue sharing. The Commonwealth taxation concessions and financial incentives were aimed at

ABARE, "Real value of Australian Fisheries production and exports", http://www.abareconomics.com/research/fisheries/management/management.html , Date last modified: Tuesday 8 April, 2003; Date cited: Monday 26 May 2003.

⁶⁷ Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 55.

⁶⁸ See Cullen, R. "Bass Strait revenue raising: a case of one government too many?" *Journal of Energy and Natural Resources Law* 6, no.4, 1988.

increasing investor confidence in offshore oil products and were successful in doing so. ⁶⁹

Whilst investor confidence was high, unresolved jurisdictional disputes over the offshore were put on hold. The individual states during the early 1960s, sought to legislate and control offshore exploration by applying onshore mining and petroleum legislation to the offshore activities. The legality of the states' arrangements was questioned by the Commonwealth, however, it was never challenged. At the time, the Commonwealth acknowledged that the states could continue regulating offshore activities due to their background in offshore management practices in fisheries.

Nonetheless, the legal uncertainty over offshore resources stimulated tensions between the Commonwealth and the states. Both jurisdictions disagreed on which activities beyond territorial limits they should regulate. The Commonwealth insisted on resolving the offshore disputes with the states for two main reasons. First, the Commonwealth wanted to clarify the issue of constitutional power in territorial sea. Second, the *United Nations Convention on the Continental Shelf* entered into force in 1964 and it gave the Commonwealth the opportunity to extend their role in offshore

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⁶⁹ Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 55.

⁷⁰ Reid, P. "Commonwealth – State relations, offshore mining and petroleum legislation: recent developments. A historic milestone or millstone?" *Australian Mining and Petroleum Law Journal* 2, no.2, 1980: 59.

⁷¹ Ibid., 60

⁷² Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 56.

policy developments.⁷³ Interestingly, both the states and Commonwealth did not want a constitutional challenge over the offshore but were attracted by the "potential economic return."⁷⁴

The negotiations over the offshore between governments and industry stakeholders began in 1962 and concluded in 1967 with the enactment of the Australian Offshore Petroleum Settlement. The Settlement set the foundations for offshore petroleum activities by outlining the legal, political and industrial parameters for intergovernmental interaction with regard to offshore oil petroleum and mining. It was agreed upon by all governments and vested control of all offshore mining and petroleum activities with the states. The states made it clear that they were the dominant administrators of offshore petroleum and mining activities and argued that they were entitled to more royalties than the Commonwealth. The determination to avoid a constitutional challenge of both the states and Commonwealth was highlighted in the preamble of the Agreement that read

the Governments of the Commonwealth and of the states have decided, in the national interest, that, without raising questions concerning, and without derogating from, their respective constitutional powers, they should cooperate for the purposes of ensuring the legal effectiveness of authorities to explore for,

⁷³ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 102.

⁷⁴ Ibid., 101.

⁷⁵ Crommelin, M. "Petroleum (Submerged Lands) Act: the nature and security of offshore titles", Australian Mining and Petroleum Law Journal 2, no.1, 1979: 135.

⁷⁶ Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 35.

⁷⁷ Ibid.

⁷⁸ Rothwell, D. and Haward, M. "Australia's maritime claims", 55.

or to exploit, the petroleum resources of those submerged lands. ⁷⁹

The Offshore Petroleum Settlement consisted of two components - the Petroleum Agreement and legislative measures. The Petroleum Agreement consisted of twenty six clauses that included a commitment to a Commonwealth Mining Code which applied to the entire offshore and a Common Mining Code which applied to each states' ocean territories. The Common Mining Code made provisions for consultation between governments and the process of amending the Agreement.⁸⁰

The Petroleum Agreement "was described in the 1970s as the most complex and innovative inter-governmental agreement yet negotiated." Despite this, it has been argued that the Agreement only postponed constitutional issues and did little to resolve them. In addition, the Agreement had the provisions to regulate the exploitation of oil and gas resources, however, it did not incorporate any environmental controls.

The Agreement formalised the permit and licence procedures for offshore exploration by establishing an intergovernmental consultation process at both minister and state officer level through the Australian Minerals and Energy

⁷⁹ Commonwealth of Australia, An Agreement Relating to the Exploration of and the Exploitation of the Petroleum Resources of the Continental Shelf of Australia and Certain other Submerged Lands (Canberra: GPS), 1967.

⁸⁰ Hunt, C. The Offshore Petroleum Regimes of Canada and Australia, (Canada: Canadian Institute of Resources Law), 1989, 64.

⁸¹ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 115.

⁸² Reid, P. "Commonwealth – State relations, offshore mining and petroleum legislation: recent developments", 60.

Council.⁸³ The royalty payment arrangements were, according to Haward, the most contentious part of the Agreement.⁸⁴ Although these arrangements only directly involved Victoria at the time, it was decided by all governments that a basic royalty of 10 per cent (based on the wellhead value) would be divided 6-8 per cent for the states and 4 per cent for the Commonwealth.⁸⁵

The second component of the Petroleum Settlement included Commonwealth and state legislation. Supporting the Petroleum Agreement was the chief Commonwealth statute, the *Petroleum (Submerged) Lands Act* 1967 which was supported by the *Petroleum (Submerged Lands) Royalty, Exploration Permit Fees, Production Licence Fees, Pipeline Licence Fees, Registration Fees, and Ashmore and Cartier Islands Acts* 1967. The states' legislation mirrored the Commonwealth to the extent that they only dealt with the offshore waters within their territorial boundaries. The Commonwealth legislation, on the other hand, applied to the whole offshore area. Consequently, any amendments to either Commonwealth or state legislation could only happen with unanimous consent. Interestingly, the Commonwealth and state legislation did not directly distinguish between the territorial sea and the continental shelf although numerous discussions were based on

⁸³ Haward, M. "The offshore", 112.

⁸⁴ Ibid.

 ⁸⁵ Cullen, R. "Canada and Australia: A federal parting of the ways", *Federal Law Review* 18, 1989:
 71; Cullen, R. *Australian Federalism Offshore*, 2nd ed, (Intergovernmental Relations in Victoria Programme, Law School, University of Melbourne), 1988, 28.

⁸⁶ Cullen, R. Federalism in Action, 65.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Reid, P. "Commonwealth – State relations, offshore mining and petroleum legislation", 60.

this topic. Both the Commonwealth and the states "were keen to set aside jurisdictional questions" but neither abandoned the use of its constitutional powers. 90

The Commonwealth Petroleum Acts did not pass through Parliament without disagreement. In October 1967, the opposition in the Senate proposed that the legislation should be referred to the Senate Standing Committee on Constitutional and Legal Affairs before its enactment. This proposal, nevertheless, was unsuccessful and the legislation was referred to a Senate Select Committee on Offshore Petroleum Resources instead. The Senate Select Committee commenced its deliberations in 1968 immediately after the legislation was in force. ⁹¹ The Committee met on 183 occasions

during which it received 84 witnesses including representatives from Commonwealth and State government departments, oil companies, unions, contractors engaged in the offshore oil industry and lawyers, economists, marine biologists, geologists and other industry specialists. 92

The inquiry lasted three and a half years and the final report, which was over eight hundred pages long, was released in 1971.

4.2 The Offshore Policy Developments During the 1970s

During the Senate Committee's deliberations, the Commonwealth was quick to assert that it held the authority to control all offshore resources. 93 It acted upon this

⁹⁰ Rothwell, D. and Haward, M. "Australia's maritime claims", 71.

⁹¹ Reid, P. "Commonwealth – State relations, offshore mining and petroleum legislation", 60.

⁹² Ibid.

⁹³ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 138.

by introducing the *Territorial Sea and Continental Shelf Bill* 1970 into Parliament. The Bill provided the Commonwealth with powers to override state jurisdiction from the low water mark to the edge of the Continental Shelf. The states made it clear that they would not accept any legislation that would remove their jurisdiction over the offshore. Although the *Territorial Sea and Continental Shelf Bill* did not become legislation, in 1973 the new Prime Minister the Commonwealth enacted the *Seas and Submerged Lands Act* and it rendered state legislation invalid from the low water mark.

The states did not believe the Commonwealth could adequately manage the offshore and marine resources. The Commonwealth gained exclusive sovereignty and jurisdictional rights over all waters up to and beyond the territorial limits and the states had limited control over their offshore resources. As a consequence, this legislation not only affected the offshore oil and mining sector, but also the fishing sector which was managed in territorial waters primarily by the states.

The *Seas and Submerged Lands Act* consisted of three parts. The first part included the preliminary details that refer to the 1958 United Nations Law of the Sea Conventions that were placed in schedules 1 and 2 of the Act. It amended various pieces of Commonwealth legislation dealing with maritime zones so that they are consistent with definitions agreed upon through the Law of the Sea.⁹⁴ The second part of the Act established the sovereign rights over the Continental shelf, and

⁹⁴ Rothwell, D. "Australia and the Law of the Sea: recent developments and post-UNCED challenges", in Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., *Oceans*

provided the legal basis for the Commonwealth to claim jurisdiction from the low water mark. This part of the Act redressed the definition of the continental shelf so that it was consistent with the provisions in the ratified *Law of the Sea Convention*, Article 56. In addition, the Act endorsed the principles from the ratified *Convention on the Territorial Sea and Contiguous Zone* that also reinforced the Commonwealth's exclusive sovereignty from the low water mark.

The third part of *Seas and Submerged Lands Act* outlined an exclusive

Commonwealth regime that dealt with the exploitation of non-hydrocarbon minerals

from the low water mark to the continental shelf. Evans argues that the Act

employed the more provocative method of jurisdictional declaration, which contained the assumption that pre-existing rights held by the Commonwealth were being formally codified for the first time.⁹⁷

The states' legal argument to retract the Commonwealth legislation was based on the provisions of the Petroleum Agreement. They claimed that the actions of the Commonwealth did not comply with the Agreement and therefore should be reversed.⁹⁸ The states decided to challenge the validity of Section 51 (xxix) which was used by the Commonwealth as a "constitutional anchor" for the *Seas and*

Law and Policy in the Post UNCED Era: Australian and Canadian Perspectives, (London: Kluwer Law International), 1996, 62.

⁹⁵ Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims", 42.

⁹⁶ Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 123.

⁹⁷ Ibid., 122.

⁹⁸ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 142.

Submerged Lands Act. ⁹⁹ They took their dispute against the Commonwealth to the High Court in the 1975 Seas and Submerged Lands Case ¹⁰⁰ where the majority of the Court found that the Commonwealth had sovereign rights from the low water mark and beyond.

The Court decided (5:2) in the Seas and Submerged Lands Case that the Commonwealth government enjoyed sovereignty over internal waters and the territorial seas and (unanimously) sovereign rights over the continental shelf.¹⁰¹

The High Court upheld Section 51 (xxix) of the Constitution and found that the ruling was valid when based on two international conventions - the 1958 *Convention on the Territorial Sea and Contiguous Zone* and the 1958 *Convention on the Continental Shelf.* Australian political history illustrates that in cases where Commonwealth legislation is challenged by the states, the High Court rules in favour of the Commonwealth in accordance to Section 109 of the Constitution. The High Court ruling reinforced that the jurisdictional limits of the states stopped at the low water mark and that the "the states only retained control over waters considered to be internal waters of a state at federation...and also offshore fishing subject to extraterritorial limitations." Nonetheless, the states continued to search for avenues to regain control over their offshore jurisdiction.

⁹⁹ Rothwell, D. and Haward, M. "Australia's maritime claims", 33.

¹⁰⁰ New South Wales v The Commonwealth (1975) 135, CLR 337.

¹⁰¹ Cullen, R. "Rights to offshore resources after Mabo 1992 and the Native Title Act 1993 (Commonwealth)", *Sydney Law Review* 18, no.2, 1996: 132.

¹⁰² Rothwell, D. and Kaye, S. "A legal framework for integrated oceans and coastal management in Australia", *Environmental and Planning Law Journal* 18, no.3, June 2001: 279.

¹⁰³ Cullen, R. "Rights to offshore resources after Mabo 1992", 132.

Rothwell, D. and Kaye, S. "A legal framework for integrated oceans and coastal management in Australia", 280.

During this period of Commonwealth control over the offshore, the Commonwealth used its jurisdiction to address concerns over mining activities in the Great Barrier Reef. The Reef, renowned for its ecological uniqueness, was placed under consideration to be mined by the Queensland government. The Commonwealth and Queensland disputed who should control activities concerning the Reef. Queensland argued that all activities were under state jurisdiction since the Reef was located within territorial waters. The Commonwealth, however, used international ratified agreements and their external affairs powers to gain legislative control over the Park.

In 1975, the Commonwealth passed the *Great Barrier Reef Marine Park Act*, which established the Marine Park and the Great Barrier Reef Marine Park Authority (GBRMPA).¹⁰⁵ The aim of GBRMPA was to protect and advocate wise use of the Marine Park, whilst incorporating economic development, involvement with the community and minimal regulation.¹⁰⁶ During the development of the park, intergovernmental tensions were already fuelled by the decisions of the *Seas and Submerged Lands Case*. The Commonwealth's involvement in Queensland coastal issues only furthered the intergovernmental tensions.

Woodley, S. "Management of the Great Barrier Reef Marine Park", in Centre for Maritime Policy, Australia's Offshore Maritime Interests, Occasional Paper in Maritime Affairs, no.3, 1985.

Sainsbury, K., Haward, M., Kriwoken, L., Tsamenyi, M., and Ward, T. Multiple Use Management in the Australian Marine Environment: Principles, Definitions and Elements, Oceans

5. The 1979 Offshore Constitutional Settlement (OCS)

In its ruling for the *Seas and Submerged Lands Case*, the High Court found that a revision of the 1967 Petroleum Agreement was necessary. The Commonwealth came to the realisation that by upholding the power over the offshore, the situation had become complicated and disputable for stakeholders and all governments involved. The Commonwealth and states entered detailed negotiations along with the Standing Committee of Commonwealth and State Attorneys General at the Premiers' Conferences in October 1977, 1978 and June 1979. The negotiations resulted in the 1979 Offshore Constitutional Settlement (OCS) which came into force in 1983. 108

The Commonwealth government introduced a package of fourteen Bills to the House of Representatives on 23 April 1980 which were given the Governor General's assent in May 1980.¹⁰⁹ During this time, the Commonwealth's Attorney General's Department also released a public "kit" that included an explanatory booklet; another booklet that consisted of statements and documents from 1978-1979; a map of the Australian continental shelf; and a map of the outer limit of the Australian Fishing Zone.¹¹⁰ Davis argues that the OCS "was not entirely constitutional in character, nor

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Planning and Management, Issues Paper 1, A report commissioned by Environment Australia: Canberra, June 1997, 27.

¹⁰⁷ Reid, P. "Commonwealth – State relations, offshore mining and petroleum legislation", 60.

Evans, N. and Bailey, J. "Jurisdiction and offshore petroleum in Australia: creating symmetry between the Commonwealth and states by sharing benefits and avoiding costs," *Ocean and Coastal Management* 34, no.3, 1996: 174.

¹⁰⁹ Reid, P. "Commonwealth – State relations, offshore mining and petroleum legislation", 62.

Department of the Attorney General, *The Offshore Constitutional Settlement: A Milestone in Cooperative Federalism*, (Canberra: AGPS), 1980; Department of the Attorney General, *Offshore Constitutional Settlement: Selected Statement and Documents* (Canberra: AGPS),

a settlement in total."¹¹¹ The main objective of the OCS was to overcome the intergovernmental difficulties that had arisen due to the *Seas and Submerged Lands Case* where the Commonwealth gained ultimate Constitutional powers from the low water mark. The Commonwealth sought primarily to give the states a greater legal and administrative role from the low water mark, whilst maintaining control of waters beyond territorial limits.

The OCS was designed to include "complementary" rather than "mirror" legislation between the Commonwealth and the states. The OCS made provisions for the states to regain their jurisdiction from the low water mark to the three mile territorial limit. Despite this, the Commonwealth continued to have control over the policy agenda during the OCS negotiations. It is important to note that the OCS did not reduce Commonwealth involvement but supported it in ocean and marine resource policy decision making. As a result, the OCS was implemented in a complex, *ad hoc* and overlapping administrative manner. 114

The development and implementation of the OCS was unique in that it addressed each sector's issues separately within its 'agreed arrangements'. Previous approaches to ocean and marine resource management were organic in design where

1980. Also see *The Australian Law Journal* 54, no.9, "Current Topics", September 1980: 517.

¹¹¹ Davis, B. "National responses to UNCED outcomes: Australia", 26.

¹¹² The Australian Law Journal 54, no.9, "Current Topics", September 1980: 517.

^{&#}x27;Mirror' legislation was enacted through the 1967 Petroleum Agreement. By enacting 'complementary' legislation through the OCS, the *State Powers* and *State Title Acts* drawn up by the states did have minor differences to the Commonwealth legislation. See Haward, M. "The offshore", 116.

"the arrangement in which each component was established as an integral part of the larger settlement." The sectoral approach used to implement the OCS along with jurisdictional divides resulted in a very segregated oceans management regime. The agreed arrangements were made up of a legislative package; an offshore 'petroleum package'; an offshore fisheries package; a Great Barrier Reef package; and new ancillary arrangements.

5.1 The Legislative Package

The legislative components of the OCS were made up of complementary legislations, based on Section 51 of the Constitution, the *Commonwealth Coastal Waters (State Powers)* and the *Commonwealth Coastal Waters (State Title) Acts* 1980. The *State Powers Act* extended the legislative powers of the states from the low water mark. This Act was also the first Commonwealth law to be passed under Section 51 (xxxviii) of the Constitution that gives power to the Commonwealth over any other power provided it occurs with the agreement "of the Parliaments of all the States directly concerned."

¹¹⁴ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 196.

¹¹⁵ Ibid., 199.

The low water mark excludes the pre-federation internal waters that are within the constitutional boundaries of the state, such as Sydney Harbour. See Commonwealth of Australia, "Australia's Oceans Policy Background", *Australia's Oceans Policy – An Issues Paper*, (Canberra: AGPS), May 1998.

The Constitution of Australia, Section 51 (xxxviii); Brazil, P. "Commentary on offshore mining and petroleum: Constitutional issues", Australian Mining and Petroleum Law Journal 3, 1981: 223.

The *State Title Act* made provisions for state territory to include the seabed beneath the territorial sea. The *Commonwealth Sea Installations Act* 1987 was also established within the OCS framework. This Act governed tourist accommodation at sea and authorised state agencies to administer Commonwealth legislation outside the three nautical mile boundary. The state of the seabed beneath the territory to include the seabed beneath the territory to include the seabed beneath the territorial sea.

The legislative package of the OCS also amended the Commonwealth's *Historic Shipwrecks Act* 1976. The Act was changed so that it applied to "waters adjacent to a state or territory, with the consent of that state or territory." Ancillary arrangements that were concerned with crimes at sea, shipping, navigation and ship based pollution were included in the package to avoid inconsistency between Commonwealth and state legislation.

The provisions for controlling ship sourced marine pollution originated from the 1954 *International Convention for the Prevention of Pollution of the Sea by Oil* (MARPOL Convention). The Commonwealth passed the *Protection of the Sea* (*Prevention of Pollution from Ships*) *Act* 1983 following MARPOL 1973/78 (see Chapter Four), however, neither the states or the Northern Territory took the opportunity to devise their own complementary ship based pollution legislation. 122

¹¹⁸ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 200.

¹¹⁹ Haward, M. "Institutional framework for Australian ocean and coastal management", 25.

¹²⁰ Davis, B. "National responses to UNCED outcomes: Australia", 28.

MARPOL was ratified by Australia in 1960. See Haward, M. "Australia's management of ship-sourced marine pollution: intergovernmental dimensions", *Australian National University Federalism Research Centre Discussion Papers*, no. 29, August 1995: 12.

Haward argues that the states and Territories did not enact complementary legislation for marine pollution for three reasons. First, the states felt they did not require ship based pollution legislation as it was already managed by the Commonwealth.

Second, the states did not want to participate in the Commonwealth activity of implementing complex decisions obtained from ratified international agreements.

Third, the states wanted to avoid the responsibility of having to control and regulate the pollution practices. Arguably, the cost involved in regulating ship-based pollution would have been an additional factor for the states in their decision not to take legal responsibility. Consequently, the Commonwealth had to amend its existing legislation to manage pollution occurring in the states and the Northern Territory.

The *Protection of the Sea Act* established that Commonwealth's control over marine pollution would apply when the accidental pollution occurred beyond territorial limits. It also applied in the event of ballast water dumping, which occurs close to ports which were normally regulated by state legislation. Control over offshore dumping of wastes was also enacted in the OCS framework through the Commonwealth's *Environmental Protection (Sea Dumping) Act* 1981.

¹²² Haward, M. "The offshore", 120.

¹²³ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, 238.

5.2 The Offshore 'Petroleum Package'

The offshore petroleum package established that the Commonwealth was to continue regulating activities beyond territorial limits. The day to day management, on the other hand, was to be administered by the states through a joint authority arrangement. The joint authorities comprised of the relevant Commonwealth minister and state ministers to "decide the major issues under the legislation including the award, renewal, variation, suspension and cancellation of titles and conditions of titles." It was agreed that the royalty payments to the states, which the Commonwealth established in the 1960s, were to continue with close consultation between Commonwealth and state officials and the Standing Committees of the Australian Minerals and Energy Council. The Common Mining Code that was established by the 1967 Petroleum Agreement was not retained by the OCS as it was found to be not "practicable".

5.3 The Fisheries Package

The OCS fisheries package, although incomplete, outlined new arrangements for fisheries management between the Commonwealth and the states. The delay in completing the package was a result of the long negotiation process over the classification of fisheries. The package aimed to introduce flexibility to fisheries management through provisions for individual fisheries and joint authorities where

Starkey, J.C., "Australia's offshore petroleum legal and administrative regime", *Maritime Studies* 37, 1987: 25.

¹²⁵ Davis, B. "National responses to UNCED outcomes: Australia", 28.

¹²⁶ Hunt, C. The Offshore Petroleum Regimes of Canada and Australia, 108.

¹²⁷ Haward, M. "The offshore", 120.

intergovernmental cooperation was required. Despite this, there was limited progress in the establishment of joint authorities due to disputes over their functions.

The package outlined the Commonwealth's fishing responsibilities which included retaining control over the Australian Fishing Zone (AFZ) and transboundary stocks such as the southern bluefin tuna. Section 4 (1) of the *Fisheries Amendment Act* 1978 specified that the AFZ includes

waters adjacent to Australia commencing at baselines and extending 200 nautical miles seaward, provided that such waters are 'proclaimed waters' under Section 7 (1) and not 'excepted waters' (under section 7 (A)). 129

The states, conversely, regained their original jurisdiction over territorial waters up to the three mile limit and were allocated control of fisheries to the boundary of the AFZ. The OCS focused primarily on the offshore fisheries disputes, and following this, the AFZ was declared. This influenced the implementation of the fisheries package and the extended zone was announced in November 1979.

Nevertheless, the fishing arrangements outlined in the *Fisheries Act* 1980 did not enter into force until 1986. 131

¹²⁸ Davis, B. "National responses to UNCED outcomes: Australia", 28.

Opeskin, B. and Rothwell, D. "Australia's territorial sea: international and federal implications of its extension to 12 miles", *Ocean Development and International Law* 22, 1991: 398.

Opeskin, B. and Rothwell, D. "Australia's territorial sea: international and federal implications of its extension to 12 miles", 423. In the case of *Bonser v La Macchia* 122, CLR (1969), authorises the Commonwealth through Section 51 (x) of the Constitution to legislate with respect to fisheries only beyond the three mile limit.

¹³¹ Haward, M. "The offshore", 122.

The implementation of the fisheries package emphasised many facets of intergovernmental relations. On the one hand, the states and the Commonwealth identified the need for a uniform approach to fisheries management and to establish guidelines against stock decline. On the other hand, the states did not agree to all Commonwealth suggestions in order to protect their own interests. The states found the joint authority approach facilitated by the OCS was adding to, rather than reducing, the existing complexities in fisheries management. A provision in the agreed arrangements further extended the power of the Commonwealth by stipulating that "in the event of disagreement within a fisheries authority, the views of the Commonwealth Minister will prevail."

5.4 The Great Barrier Reef Package

The Great Barrier Reef package in the OCS not only applied to the Reef area but other marine protected areas. The package reinforced the *Great Barrier Reef Marine Park Act* 1975 and the joint consultative arrangements between the Commonwealth and the state of Queensland with regard to the marine region. The OCS package led to the proclamation of the first zone of the marine park and the establishment of the Great Barrier Reef Ministerial Council. ¹³⁴

The *Great Barrier Reef Marine Park Act* and OCS arrangements established provisions for the Great Barrier Reef to be managed by Queensland government

132 Haward, M. and Rothwell, D. "Australia's maritime claims", 40.

¹³³ Department of the Attorney General, *The Offshore Constitutional Settlement: A Milestone in Cooperative Federalism*, (Canberra: AGPS), 1980.

officials who report to GBRMPA. The Ministerial Council's role was to facilitate and routinise intergovernmental relations with regard to the Great Barrier Reef Marine Park. This OCS package also provided for state management of other marine parks within territorial limits and Commonwealth management of the parks that were located beyond territorial limits.

6. Intergovernmental Relations Following the Enactment of the Offshore Constitutional Settlement

The election of a new Labor government three weeks after the proclamation of the OCS tested the strength and validity of the agreement. The new government did not hide its displeasure with the OCS arrangements. The states, on the other hand, found the OCS arrangements favourable and placed extensive pressure on the Commonwealth to implement decisions, especially those relating to fisheries. The Commonwealth investigated whether to pursue extending its offshore powers or to support the implementation of the OCS. A review of the OCS by the Commonwealth in 1986 found that the intergovernmental arrangements were operating satisfactorily and the Commonwealth decided not to pursue claiming title over the territorial sea. 136

During 1989, the Commonwealth and South Australia disputed the validity of a joint arrangement established through the OCS concerning the rock lobster fishery. The High Court upheld the validity of the joint agreement where South Australia was

¹³⁴ Haward, M. "The offshore", 120.

¹³⁵ Ibid., 116.

permitted to exercise legislative powers with regard to the fishery beyond territorial limits.¹³⁷ This case not only reinforced the validity of joint agreements but emphasised the jurisdictional relevance of the OCS.¹³⁸

The Great Barrier Reef Marine Park became an example of inter-governmental and intra-governmental cooperation. A Consultative Committee, a number of Regional Resources Advisory Committees and Technical Advisory Committees were established to assist GBRMPA and the Ministerial Council in the management of the Park. Haward argues that ability of the Ministerial Council and GBRMPA to negate the policy demands of both Queensland and the Commonwealth "illustrates the 'institutionalising' of intergovernmental relations in Australia." This approach also demonstrated that the jurisdictional demands of the Commonwealth and the states can coexist with environmental and commercial demands of a managed marine area.

7. Conclusion

This chapter has discussed the processes that resulted in the development of ocean and resource policies from Federation to 1990. It has argued that the development of oceans policies in Australia during this period resulted in sectoral and jurisdictional divisions. The states controlled and managed ocean and marine resources in

¹³⁶ CPD (H) Commonwealth Parliamentary Debates, House of Representatives, 20 March 1986: 1781.

¹³⁷ Port MacDonnell Professional Fisherman's Association v South Australia (1989) 168 CLR 340.

¹³⁸ Rothwell, D. and Kaye, S. "A legal framework for integrated oceans and coastal management in Australia", 281.

¹³⁹ Sainsbury, K., Haward, M., Kriwoken, L., Tsamenyi, M., and Ward, T. "Multiple use management in the Australian marine environment: principles, definitions and elements", 28.

Australian waters throughout the early 1900s and although some fishing activities were based beyond territorial limits, the Commonwealth was satisfied that the states could regulate them. The Commonwealth was cautious in its approach to address maritime issues, however, it demonstrated through the institutionalisation of fisheries administration during the 1960s that it was a key actor in offshore matters.

The offshore was the main focus for all Australian governments during the 1970s and intergovernmental tensions increased to the point where the offshore jurisdictional issues had to be resolved. The High Court's decision in 1975 and the OCS reinforced that the Commonwealth had the Constitutional and legal rights to control aspects of the offshore. Consequently, the OCS has become the legislative framework for intergovernmental decision making in regard to marine and ocean resource issues in Australia.

This chapter has deliberately avoided examining the policy decisions that were based on external political arrangements. Chapter Four explores the externalities that have contributed to policy decisions in oceans policies since Federation. Such externalities include ratified international agreements that have had an impact on Commonwealth decisions concerned with maritime issues; national political decisions such as 'New Federalism'; and changes to the Australian public service in the 1990s.

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¹⁴⁰ Haward, M. "The offshore", 120.

The following chapter turns to the second period of oceans policy development in Australia through the examination of national and regional coastal policies. It examines the increasing confidence of the Commonwealth during the 1990s to make policy decisions regarding maritime issues, in particular issues that have been under the jurisdiction of the states. The chapter analyses the processes that led to the development of the *Commonwealth Coastal Policy* and individual state coastal policies whilst evaluating the sectoral and jurisdictional divides that have been embedded in ocean policy decisions.

CHAPTER THREE

Ocean and Coastal Policy Developments During the 1980s and 1990s

1. Introduction

Action on ocean and coastal policy during the 1980s and 1990s had implications for intergovernmental relations and oceans policy development in Australia. The focus on the offshore by all governments in previous decades was replaced with a focus on global, national and local environmental concerns. The management of Australia's coastal area had been neglected by the Commonwealth until increasing attention concerning over degraded beaches and waterways dominated political discussions.

Despite the 'settlement' of the jurisdictional issues through the *Offshore*Constitutional Settlement (OCS), Commonwealth and state relations in ocean and coastal issues throughout the 1990s continued to be difficult. The Intergovernmental Agreement on the Environment enabled all levels of government to negotiate specific guidelines for the marine environment, however, tensions relating to intergovernmental interaction over offshore and coastal management continued to dominate the process. It is these tensions that underpin the later development of Australia's Oceans Policy.

This chapter analyses the development of integrated coastal zone management in Australia through the Commonwealth's coastal zone inquiries that led to the development of the *Commonwealth Coastal Policy*. It is argued that the states and

Northern Territory were quick to redevelop their coastal initiatives in response to the Commonwealth inquiries. The states feared that their legislative control over coasts would be compromised and that the Commonwealth would use the coastal policy process to establish similar joint arrangements used to manage the Great Barrier Reef Marine Park. Local governments, although not formally recognised in the Constitution, were recognised as integral participants in the administration of coastal areas and contributed to the Commonwealth inquiries.

Whilst the coastal inquiries were proceeding, the Commonwealth recognised that little attention had been placed on the management and coordination of marine science and technology. This chapter begins by examining the Commonwealth initiatives in this area which have resulted in closer links between key marine research institutions, industries, and governmental agencies. Consequently, the establishment of these links has contributed to the later development of *Australia's Marine Science and Technology Plan*.

2. Marine Science and Technology

The OCS brought considerable attention to, *inter alia*, the use of science and technology in offshore resources and confirmed that many industries and research institutes distrusted the government. The Commonwealth realised that the institutional arrangements governing Australian marine science and technology emphasised the problems of fragmentation within Commonwealth and state research

institutes.¹ Consequently, the Commonwealth enacted a Review Committee on Marine Industries, Science and Technology to address this fragmentation. The Review Committee's report, *Oceans of Wealth?* was completed in 1989 and focused on governmental and non-governmental organisations that had an interest in marine science and technology. Some of these included the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and its divisions, Commonwealth agencies and bureaus, universities and major companies such as Broken Hill Propriety (BHP).² The report emphasises that

the attractiveness of the marine environment in Australia underlies a large portion of tourism and recreation, both of which contribute in large measures to our GDP and our national well-being. To preserve this attractiveness, in the face of increasing human activity requires conscious environmental management which in turn requires a knowledge base about the underlying ecology.³

In addition, the report critiques the marine science and technological activities, or lack of, within Australia and its offshore estates during the late 1980s. Following publication of *Oceans of Wealth?* the Heads of Marine Agencies Group (HOMA) established the Australian Marine Science and Technology Company (AMSAT) to provide links between governmental and non-governmental based research. It is a public listed company with "a commercially orientated, consortium approach to marine science."

¹ Haward, M. "Institutional framework for Australian ocean and coastal management", *Ocean and Coastal Management* 33, no.1-3, 1996: 30.

² Ibid.

³ Review Committee on Marine Industries, Science and Technology, *Oceans of Wealth?*, Department of Industry, Science and Technology, (Canberra: AGPS), 1989, 33.

⁴ Haward, M. "Institutional framework for Australian ocean and coastal management", 30.

The Australian Marine Industries and Sciences Council (AMISC) was also established in 1995 as a collaboration of government and industry. Its role is to advise the Commonwealth on how best to develop marine industries within Australia's Exclusive Economic Zone (EEZ).⁵ AMISC does not address specific sectoral issues of government or industry, rather it focuses on cross sectoral issues that are directly related to its interests.⁶ It identifies five key issues that influence marine development and are common to marine industries: regulation and management of marine industries; managing for outcomes; multiple use; basic data; research and training.⁷

3. Ocean Rescue 2000

The Commonwealth's strong interest in the management and protection of Australia's oceans and coasts is reflected in the proposed decade long Ocean Rescue 2000 (OR 2000) program. It was established by the Labor Government in 1991 and administered by the Commonwealth Department of Environment, Sport and Territories (DEST). Its main support structure included the Great Barrier Reef Marine Park Authority (GBRMPA) and the Australian Nature Conservation Agency (ANCA), both of which were bodies within the DEST portfolio. Ocean Rescue

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⁵ English, A. "A Marine Industry Development Strategy for Australia", in McKinnon, D. and Sherwood, D. eds., *Policing Australia's Offshore Zones: Problems and Prospects*, (Centre for Maritime Policy: University of Wollongong), 1997.

⁶ AMISC, "Marine Industry Development Strategy", <u>http://www.dist.gov.au/PUBS/REPORTS/MARINE/Jan97/execsum.html</u>, date last modified: January 1997, date cited: 23 July, 2001.

⁷ AMISC, "Marine Industry Development Strategy", 2.

⁸ Haward, M. "Institutional framework for Australian ocean and coastal management", 29.

2000 aimed to promote conservation and sustainable use of Australia's marine and coastal environments by building upon existing government programs and complementing initiatives such as Landcare, the Biological Diversity Strategy and coastal strategies.

The main elements of the program included the creation of a national network of marine protected areas (MPAs) in Australia and an Australian Marine Conservation Plan to guide the use and management of ocean resources. The Australian and New Zealand Environment and Conservation Council (ANZECC) established an Advisory Committee on Marine Protected Areas that included key OR 2000 agencies to facilitate the development of a national representative system of MPAs. Other aspects of the OR 2000 program included a national marine education program and a Marine and Coastal Community Network both of which were under the responsibility of ANCA. The department provided the overall coordination and policy direction.

As a part of the OR 2000 program, community service announcements were delivered publicly through all forms of media, and community based activities were organised throughout Australia and New Zealand to encourage public support. The Marine and Coastal Community Network used this community and media strategy by holding an Ocean Care Day on the 5 December 1993.¹⁰ The aims of the day were to

Stocker, L. and Moore, S. "Community involvement in ocean and coastal policy in Australia", Waves Newsheet for the Marine and Coastal Community Network 6, no.2, Autumn 1999: 1-3.

¹⁰ The Marine and Coastal Community Network, *Ocean Care Newsheet*, no.3, October 1993, 1.

increase the community awareness of...marine and coastal values and problems; the ability of individuals to make a difference on Ocean Care Day and every day; and the groups and individuals involved in marine and coastal conservation and management issues and initiatives.¹¹

By achieving a large public response, the Ocean Care Day became an annual event that is held during the first week of December.¹²

The Commonwealth allocated A\$1.8 million to the OR 2000 program in its original budget. The Prime Minister's Statement, which was released on 22 December 1992, announced that this sum was to be boosted by another A\$4.8 million over four years. During the 1995 budget another A\$5 million was provided through the Commonwealth coastal policy initiatives. Haward argues that "this additional funding was provided for targeting areas of significance for marine conservation and to expand the consultative process within the OR 2000 program." 13

During February 1995, the *State of the Marine Environment Report* (SOMER) was released as a part of the OR 2000 program. SOMER represented three years work from 134 scientists and technical experts, 14 members of the SOMER Advisory Committee and around 160 external reviewers and was coordinated by a team from the OR 2000 program.¹⁴ Arguably, SOMER was the first comprehensive scientific

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¹¹ Ibid.

¹² The Marine and Coastal Community Network, "The Marine and Coastal Community Network Homepage", http://www.mccn.org.au, cited 29 October 2001.

¹³ Haward, M. "Institutional framework for Australian ocean and coastal management", 29.

¹⁴ Tarte, D. "Our sea, our future…major findings of the State of the Marine Environment Report for Australia", Waves Newsheet of the Marine and Coastal Community Network 2, no.1, March 1995: 1.

description of the state of Australia's marine environment.¹⁵ It covered the region from estuaries and seashores up to the edge of the 200 mile Exclusive Economic Zone. SOMER also discussed MPAs in detail, as they were the major reason for the establishment of the OR 2000 program.¹⁶ A national marine information system was also designed together with SOMER to ensure adequate baseline and monitoring information about the environment.

4. The Intergovernmental Agreement on the Environment

During the late 1970s and 1980s, environmental management developed as one of the primary issue areas of intergovernmental conflict. The Commonwealth's increasing intervention in state environmental issues, such as halting the development of a dam on the Gordon-below-Franklin River in Tasmania and the rainforest dispute in Queensland, increased tensions between the Commonwealth and the states.¹⁷ Prime Minister Hawke used the environmental issues to emphasise the government's 'new federalism' plan (see following chapter). Despite this, the actions by the Commonwealth only raised concerns from all levels of government over environmental management practices. As a result, the Commonwealth began the process of negotiation to deal with the management of natural resources and offered a new way forward for intergovernmental relations.

¹⁵ Ibid.

¹⁶ Commonwealth of Australia, State of the Marine Environment Report, (Canberra: AGPS), February 1995. Also see http://www.ea.gov.au/coasts/information/reports/somer/#about.

¹⁷ See the Tasmanian Dams Case, Commonwealth v Tasmania (1983) ALR 625; Bates, G. Environmental Law in Australia, (Sydney: Butterworths), 1992; Fowler, R. "Environmental

The Commonwealth, states and the Local Government Association entered into negotiations for what became known as the Intergovernmental Agreement on the Environment (IGAE). Negotiations were initiated in the first Special Premiers' Conference in 1990 and continued in other meetings throughout the following year. During the meeting held in July 1991, discussions between some states and the federal government were weakened on the position of forestry issues. The Heads of Government, however, "instructed the Working Group charged with the task of drawing up the agreement to progress this work as far as possible and provide a report to the November Special Premiers' Conference." 18

Although the Commonwealth and state governments supported the development of the agreement, environmental groups such as the Australian Conservation Foundation (ACF) argued that state negotiations were unnecessary since the Commonwealth had the power to enforce most environmental controls. The ACF's concerns were taken into consideration but they did not impede the completion of the intergovernmental agreement. At least twelve drafts of the IGAE were prepared within the year up to November 1991. The release of the IGAE was politically driven to coincide with Prime Minister Keating's *One Nation* statement, which demonstrated the move away from Hawke's new federalism (See Chapter Four). The final text of the IGAE was released on 25 February 1992, the day before the statement was given by Prime Minister. The *One Nation* statement emphasised the

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law and its administration in Australia", *Environmental and Planning Law Journal* 8, 1984; Also refer to Chapter One.

¹⁸ Special Premiers' Conference, *Communiqué*, October 1991.

Commonwealth's success with settling "the IGAE text with the States and Territories." ¹⁹

After two years of negotiation the IGAE came into effect in May 1992.²⁰ Haward argues that the IGAE is "a major watershed in Commonwealth - State relations over the environment, and has particular relevance in terms of institutional arrangements concerning aspects of ocean management."²¹ The aim of the IGAE is to facilitate a cooperative approach for environmental management whilst improving relations and decision making processes between the Commonwealth, state and local governments. Accordingly, the Agreement outlines the environmental responsibilities of each sphere of government.²² The states and Territories are recognised as having responsibility over the majority of issues within their boundaries.

The Agreement also makes provision for the involvement of the Commonwealth government in areas where it has demonstrated responsibilities and interests.²³ This provision for Commonwealth interference, despite the initial agreement, has inevitably caused familiar tensions between the Commonwealth government and the states. The first sign of conflict occurred in 1993 when Western Australia withdrew

¹⁹ Keating, P.J. *One Nation*, Statement by the Prime Minister, the Honourable P.J. Keating MP, 26 February 1992.

Davis, B. "National Responses to UNCED: Australia", in Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., Oceans Law and Policy in the Post-UNCED Era: Australian and Canadian Perspectives, (London: Kluwer Law International), 1996, 29.

²¹ Haward, M. "Institutional framework for Australian ocean and coastal management", 26.

²² Commonwealth of Australia, "Section 2", *Intergovernmental Agreement of the Environment*, (Canberra: AGPS), May 1992.

²³ Haward, M. "Institutional framework for Australian ocean and coastal management", 26.

from the IGAE. A provision for a review every three years was also included within the IGAE to overcome conflicts and difficulties.²⁴

The IGAE includes many guidelines for marine and coastal management and refers to the importance of preserving biodiversity. It outlines the need for marine protected areas and measures to control introduced pests within the marine environment. The Ministerial Council on Fisheries was selected as an advisory body for the implementation of the *Convention on Biological Diversity*. In addition, the National Environment Protection Council was established and charged *inter alia* with protecting ambient marine, estuarine and fresh-water quality, and environmental impacts associated with hazardous waste. The National Environment Protection Council sets its environmental goals and standards through National Environmental Protection Measures. It is important to note that the IGAE incorporated the precautionary principle in environmental policy making which, Haward argues "has direct relevance to ocean and coastal management."

²⁴ Davis, B. "National Responses to UNCED: Australia", 30.

²⁵ Haward, M. "Institutional framework for Australian ocean and coastal management", 26.

National Environment Protection Council, "Homepage", http://www.nepc.gov.au, cited 8 November 2001.

²⁷ Haward, M. "Institutional framework for Australian ocean and coastal management", 26.

5. Ecologically Sustainable Development

The origins of the ecologically sustainable development (ESD) concept can be traced back as far as the release of the 1980 World Conservation Strategy and the 1983 National Conservation Strategy for Australia.²⁸ Despite these initiatives, it was the report *Our Common Future* developed by the World Commission on Environment and Development²⁹ in 1987 that clearly defined the concept of 'sustainable development' and promoted its use as a parameter for international and domestic policy.³⁰ The report also focused on integrated resource management and this became the central theme to Agenda 21, a major outcome of the United Nations Conference on the Environment and Development held in 1992 (see Chapter Four for further details).

In response to *Our Common Future*, Australia's initiation of sustainable development practices was launched through the Prime Ministerial statement in July 1989.³¹
Following this, the Commonwealth released a discussion paper, *Ecologically Sustainable Development*, in June 1990 after consultation with industry, union and environmental organisations.³² This report defined ESD as

using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are

²⁸ Commonwealth of Australia, "Part 1, Introduction", *National Strategy for Ecologically Sustainable Development*, http://www.environment.gov.au/portfolio/esd/nsesd/intro.html, Last modified: 31 July 1996.

²⁹ Also known as the Bruntland Commission.

³⁰ See Chapter Four for further discussions on sustainable development in the international areana.

³¹ Commonwealth of Australia, *Our Country Our Future*, Prime Ministerial Statement, July 1989, (Canberra: AGPS), 1989.

³² Commonwealth of Australia, *Ecologically Sustainable Development: A Commonwealth Discussion Paper*, June 1990, (Canberra: AGPS), 1990.

maintained, and the total quality of life, now and in the future, can be increased.³³

The Prime Minister proposed that nine sectoral Working Groups, under the guidance of three chairmen, be established to guide government on future decisions and policy implementation. The sectors covered by the working groups were Agriculture, Forestry, Fisheries, Transport, Mining, Manufacturing, Energy Production, Energy Use and Tourism.³⁴ The working groups consisted of members from Commonwealth and state agencies, business, industry, union and environmental organisations.³⁵ The Prime Minister identified four goals to guide these Working Groups:

- The improvement of individual and community wellbeing and welfare by following a path of economic progress that does not impair the welfare of future generations.
- The provision of equity within and between generations.
- Recognition of the global dimension.
- The protection of biological diversity and the maintenance of ecological processes and systems.³⁶

The key environmental organisations in the working groups included the ACF, the World Wide Fund for Nature (WWF), the Wilderness Society and Greenpeace.

Nevertheless, Greenpeace and the Wilderness Society withdrew from negotiations

³³ Ibid.

³⁴ Kenchington, R. and Crawford, D. "On the meaning of integration in Coastal Zone Management", *Ocean and Coastal Management* 21, 1993:119.

³⁵ Haward, M. "Institutional framework for Australian ocean and coastal management", 28.

when they did not come to an amicable agreement with the Commonwealth over forest management issues. The WWF and ACF decided to continue with the process for a number of reasons. First, they believed that the public wanted environmental groups to be involved in the ESD process. Second, they argued that by remaining involved they would have a better position of input in decision making and in policy development. Third, they had a direct method of lobbying against Commonwealth control over environmental policies.³⁷ The Commonwealth funding that was made available to the ACF and WWF at the time also influenced their decision.³⁸

Following the release of a Discussion Paper, the Government received over 200 responses from groups and individuals. Many identified cross sectoral and intergovernmental problems as their greatest concerns in the ESD process.³⁹ The Working Groups released draft reports on 7 August 1991 and the final reports were originally planned to be presented to the Special Premiers' Conference meeting in November 1991. Despite these intentions, the meeting was never held as difficulties arose over aspects of the Commonwealth and state financial relations.⁴⁰ The ACF and the WWF lobbied desperately for the process to continue. The *National Ecologically Sustainable Development Strategy*⁴¹ was completed in December 1992,

³⁶ Ecologically Sustainable Development Working Group - Secretariat, ESD Newsbrief, (Canberra: AGPS), May 1991, 1.

³⁷ ACF and WWF, *Dancing with Wolves: An Information Bulletin on the Ecologically Sustainable Development Process*, no.1, April 1991: 1.

³⁸ Haward, M. "Institutional design and policy making 'down under': developments in Australian and New Zealand coastal management", *Ocean and Coastal Management* 26, no.2, 1995: 98.

³⁹ Ecologically Sustainable Development Working Group - Secretariat, ESD Newsbrief, 7.

⁴⁰ Haward, M. "Institutional framework for Australian ocean and coastal management", 28.

⁴¹ Commonwealth of Australia, *National Ecologically Sustainable Development Strategy*, (Canberra: AGPS), 1992.

despite the difficult political environment at the time concerned with financial struggles, the change of leadership in the Australian Labor Party and the appointment of a new Prime Minister.

Numerous responses outlining the limitations of the sectoral structure of the working groups and the ESD process followed the release of the Discussion Paper. These responses were tackled by the preparation of an *Intersectoral Issues Report* from the chairs of the ESD Working Groups.⁴² The Report recommended that ESD principles and practices should be applied to the 'intersectoral issues' in coastal zone management. Additionally, the Report recommended specific changes to the institutional arrangements that included altering processes to improve integrated decision making. The recommendations from the *Intersectoral Issues Report* were then included in the *National Ecologically Sustainable Development Strategy*.⁴³ The ESD Strategy recognises the difficulties with integrated approaches to policy making and "jurisdictions will need to recognise the regional and local dimensions of their policy formulation and ensure appropriate community consultation mechanisms are established."⁴⁴

⁴² Haward, M. "Institutional framework for Australian ocean and coastal management", 28; ESD Chairs, *Intersectoral Issues Report*, (Canberra: AGPS), 1992.

⁴³ Haward, M. "Institutional framework for Australian ocean and coastal management", 28.

⁴⁴ Commonwealth of Australia, National Strategy for Ecologically Sustainable Development, 66.

The Strategy establishes a number of key objectives and principles, and aims to provide

development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.⁴⁵

Guiding principles are also embedded in the Strategy and that states "decision making processes should effectively integrate both long and short term economic, environmental, social and equity considerations." Chapter 16 of the Strategy is devoted to changes within government institutions while Chapter 17 specifically concentrates on coastal zone management and the development of policies that coincide with ESD principles. In essence, the Strategy encourages a holistic approach to environmental management. The application of ESD principles in Australia has been integral to the OR 2000 Program and the Resource Assessment Commission's Coastal Zone Inquiry in 1992-3.

The ESD principles have been applied to ocean and coastal management approaches since the release of the Strategy. One example of this is the work of the ESD Sub-Group 21, a group of Commonwealth and state officials with interests in coastal management. This group worked closely with the Resource Assessment Commission and its *Coastal Zone Inquiry* in 1992-3 (see following discussions).

⁴⁵ Kenchington, R. and Crawford, D. "On the meaning of integration in Coastal Zone Management", 119.

⁴⁶ Commonwealth of Australia, *National Strategy for Ecologically Sustainable Development*, 8.

⁴⁷ Ibid.; Kenchington, R. and Crawford, D. "On the meaning of integration in Coastal Zone Management", 119.

6. Coastal Zone Management - Commonwealth

Australia's population, although relatively small in ratio to the area of land, was, and continues to be, heavily concentrated on the coastal zone.⁴⁸ It is estimated that the coastal zone supports 86 per cent of Australia's population.⁴⁹ During the late 1970s, there was a realisation that large population centres were being over developed and were impacting the coastal environment. An approach for national coastal management was recommended to the Commonwealth for the first time in 1974 through the *Report of the National Estate*.⁵⁰ In 1978, the House of Representatives Standing Committee on Environment and Conservation (HORSCEC) was requested to investigate the uses, development and management of Australia's coastal zone.

Although the issue of coastal management was recognised on the political agenda and offshore issues were given priority, it did not receive adequate attention until the late 1980s. The OCS provided a cooperative framework for Commonwealth and state administration of marine policies and the states retained responsibility of the low water mark to the three mile offshore boundary. Therefore, the states and the Northern Territory had near complete jurisdiction over the coastal zone within their boundaries. There were some areas, however, where the Commonwealth had direct responsibilities for the coastal zone and these included "land containing defence establishments, lighthouses or other reserves, and the regulation of foreign

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⁴⁸ Yapp, G. "Aspects of population, recreation, and management of the Australian coastal zone", *Coastal Zone Management Journal* 14, no.1-2, 1986: 47.

⁴⁹ Commonwealth of Australia, "Coasts and Clean Seas Initiative", http://www.nht.gov.au, cited 25 October 2001, last modified 1999.

⁵⁰ Hunt, C. "The management of coastal resources: a job for the Commonwealth?", *Current Affairs Bulletin* 69, no.10, March 1993:20.

investment in development projects through the Foreign Investment Review Board."⁵¹ Notably, the jurisdictional framework for coastal zone management was outlined in the OCS and the IGAE.

Since 1980, the Commonwealth had conducted 29 inquiries into the management of coasts. Arguably one of the most significant reports from the inquiries was the 1980 *Management of the Australian Coastal Zone* from HORSCEC.⁵² This review took place during the finalisation of the OCS. The report identified a lack of intergovernmental coordination and recommended the development of a national coastal policy that did not impede any changes to state responsibilities. This was the frame of mind that reflected the outcomes of the OCS negotiations proceeding at the time.⁵³ The Report also recommended that an Australian Coastal Management Council should be established to address the lack of intergovernmental coordination in coastal zone policy making and to determine financial guidelines.⁵⁴ The Commonwealth did not act upon the recommendations of the Report and neither a coastal policy nor council was established.

Nevertheless, the Commonwealth's increasing interest in establishing effective coastal zone management was fuelled by interest groups lobbying for a more unified

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⁵¹ Haward, M. *Intergovernmental Relations and Coastal Zone Management*, Submission to the House of Representatives Standing Committee on the Environment, Recreation and the Arts, 1990.

⁵² Kay, R. and Lester, C. "Benchmarking the future direction for Coastal Management in Australia", Coastal Management 25, 1997: 273.

⁵³ House of Representatives Standing Committee on Environment and Conservation, *Australian Coastal Zone Management*, (Canberra), 1980, page 38, paragraph 198.

⁵⁴ Ibid., 39-41.

approach to coastal zone management.⁵⁵ Academic interest in coastal management was stimulated as a result and during September 1993, the Institute of Applied Environmental Research at Griffith University held a major conference to discuss future ramifications of integrated coastal management.⁵⁶

A second inquiry into coastal zone management commenced in June 1989 and was held by the House of Representatives Standing Committee on Environment, Recreation and the Arts (HORSCERA). The House of Representatives was dissolved due to an election in March 1990 and accordingly the Committee also ceased to exist. Nevertheless, the new Parliament re-established the Committee and the inquiry recommenced under the delegation of the new Minister for Arts, Sport, the Environment, Tourism and Territories, Ros Kelly. The Inquiry was advertised nationally and almost 200 public submissions were received. After meeting with concerned groups around Australia, the Committee found that a large number of submissions related to local environmental problems.⁵⁷ In order to keep the large number of stakeholders informed about the Inquiry process, the Committee released a Discussion Paper for public comment in October 1990. The Discussion Paper raised such a large public response that additional public hearings were held by the Committee.⁵⁸

⁵⁵ Haward, M. "Australian Coastal Management: A clear picture or a cluttered foreground?", *Maritime Studies*, May-June, 1994: 1.

⁵⁶ Hundloe, T. ed., Coastal Zone Management: Integrating Development and Conservation, (Griffith University: IAER), 26-27 September, 1989.

⁵⁷ House of Representatives Standing Committee on Environment, Recreation and the Arts, *The Injured Coastline: Protection of the Coastal Environment*, (Canberra: HORSCERA), 1991: paragraph 1.2, 1.

The Committee found that

the fragmented structure of decision making by public agencies operating within existing coastal management arrangements is reflected by the following organisational problems: the multiplicity of public agencies, existences of arbitrary administrative boundaries and the failure to consider cumulative effects of decisions (the tyranny of small decisions).⁵⁹

The Injured Coastline was presented to parliament in April 1991 and had similar recommendations to the 1980 HORSCEC Report. Again, it was recommended that a holistic approach should be taken to coastal management where existing coastal management arrangements are coordinated and communication is improved for all levels of government.⁶⁰ The Report suggested that the Commonwealth enact a national coastal zone management strategy

in cooperation with the states and territories and local governments to provide the framework for the coordination of coastal management throughout Australia. The strategy should incorporate agreed national objectives, goals, priorities, implementation and funding programs and performance criteria.⁶¹

The Report recommended that the Commonwealth should enact legislation;⁶² and that the proposed Environmental Protection Agency be the federal body responsible for coastal matters.⁶³ It noted that effective public participation in coastal zone management should be encouraged and that the local government should be

⁵⁸ Ibid., paragraph 1.6, 2.

⁵⁹ Ibid., xiii.

⁶⁰ Ibid., xiii.

⁶¹ Ibid., Recommendation 8, paragraph 6.24, 84.

⁶² Ibid., Recommendation 12, paragraph 6.31, 84-87.

⁶³ Ibid., 85.

responsible for involving community groups in specific projects and issues.⁶⁴ The Committee proposed that the legislation would set out

- a) federal interests in the coastal zone;
- b) agreed national objectives;
- c) agreed national environmental guidelines and standards (including standards for water quality and industrial waste discharges); and
- d) financial assistance schemes to assist the states and local governments to formulate coastal management plans and policies that are consistent with the objectives and goals of the national strategy.⁶⁵

In July 1989, Prime Minister Hawke announced that a National Working Group on Coastal Management was to be established to review the HORSCERA Report.

Appointments to the Working Group and finalisation of its terms of reference were delayed as another Inquiry into the Coastal Zone by the Resource Assessment Commission (RAC) had commenced. The Prime Minister also announced that the Commonwealth would refer all coastal matters to the newly appointed RAC.⁶⁶

The Commonwealth's *Resource Assessment Commission Act* 1989 was created by the Hawke Government as an alternative method for settling disputes over resource policy development. The Act provided for a statutory authority that comprised of a chief commissioner and assistant commissioners with specific expertise in the

⁶⁴ Ibid., 86.

⁶⁵ Ibid., Recommendation 12, paragraph 6.31, 84-87.

⁶⁶ Haward, M. "Institutional design and policy making 'down under'", 95.

relevant inquiry issue area.⁶⁷ Section 8 of the Act provided for investigations into a resource matter and "to identify the extent and potential uses of a resource (including the cultural, social, environmental, and scientific as well as economic utility if the resource under investigation)."⁶⁸ Ecologically Sustainable Development principles were also integrated into the guidelines for investigating the resource in the Act.

The Department of Arts, Sport, the Environment, Tourism and Territories advised HORSCERA in December 1990 that it intended the Working Group provide a structure to maximise cooperation with the state and territory governments on national coastal issues. During April 1992, the Commonwealth announced its commitment to develop an integrated coastal policy recommended through *The Injured Coastline*. The Commonwealth released a response to the Report where it outlined which recommendations it would apply to the coastal policy. In its response, the Commonwealth recognised that the RAC Inquiry had already commenced and that during policy development, the RAC "will focus on ways of achieving integrated coastal zone management between the three levels of government." The Commonwealth stressed that the RAC Inquiry would not conflict or duplicate but compliment the development process of the coastal policy.

⁶⁷ Economou, N. "Accordism and the environment: the Resource Assessment Commission and national environmental policy making," *Australian Journal of Political Science* 28, no.3, November 1993: 406.

⁶⁸ Ibid.,

⁶⁹ House of Representatives Standing Committee on Environment, Recreation and the Arts, *The Injured Coastline*, paragraph 3.32, 38.

⁷⁰ Kelly, R., Minister for the Arts, Sport, the Environment, Tourism and Territories, *Government to prepare policy for coastal protection*, Media Release, 2 April 1992.

⁷¹ Commonwealth of Australia, Government Response to the House of Representatives Standing Committee on Environment, Recreation and the Arts titled 'The Injured Coastline - Protection of the Coastal Environment', (Canberra: AGPS), April 1992, 3.

Notwithstanding the recommendations of the HORSCERA report, the Commonwealth did not commit to the development of any legislation.⁷²

The RAC formally began its inquiry in October 1991 and conducted its extensive research into management of the coastal zone through many methods, focusing on the case study approach. It selected five coastal areas, one each from Victoria, Tasmania, Western Australia, New South Wales and South Australia. Each area was already managed and the objective of the RAC was to assess these arrangements. The cases aimed to answer "how is building tourism, mariculture, and associated development managed in the coastal zone and how is the coastal zone managed as a whole?"⁷³

The RAC's second method of inquiry was a research and consultation program that was held in 1992-93 and received 734 submissions.⁷⁴ The Draft Report was released in early 1993 and included an extensive survey of issues such as attitudes and values towards the coastal zone, Aboriginal and Torres Strait Islander interests and the

⁷² Ibid., 11.

Resource Assessment Commission, "Coastal Management and decision making processes in the Huon /Channel Area", Coastal Zone Inquiry - Tasmanian Case Study, (Canberra: AGPS), January 1993; Resource Assessment Commission, "Coastal Management and decision making processes in the Yorke Peninsula Area", Coastal Zone Inquiry - South Australian Case Study, (Canberra: AGPS), January 1993; Resource Assessment Commission, "Coastal Zone Management in the north coast region - Shires of Byron, Ballina and Maclean", Coastal Zone Inquiry - New South Wales Case Study, (Canberra: AGPS), January 1993; Resource Assessment Commission, "Western Australian Case Study Report Study area: Geographe Bay", Coastal Zone Inquiry - Western Australian Case Study, (Canberra: AGPS), January 1993; Resource Assessment Commission, "Coastal Management and decision making processes in the Westernport Area", Coastal Zone Inquiry - Victorian Case Study, (Canberra: AGPS), January 1993.

⁷⁴ Haward, M. "Institutional design and policy making 'down under", 95.

future use of resources.⁷⁵ The Draft Report served its purpose by concluding the first stage of the RAC Inquiry, however, it did not provide any conclusions or recommendations.

The Draft Report specified that it was not to

be interpreted as being exhaustive or as expressing any final review about any course of action in relation to the management of Australia's coastal zone; the views expressed may change in light of further information the Inquiry receives before it prepares its final report.⁷⁶

The Draft Report led to further, more specific, hearings and workshops in mid 1993. At the end of August 1993, following public comment on the Draft Report, draft recommendations and conclusions of the RAC Inquiry were released in the form of a document titled *A National Coastal Action Plan*. It was released for public comment and the RAC described the process as "an exhaustive review of the management of Australia's coastal zone." The framework of the National Coastal Action Plan was outlined in the Report and it contained four main components. These components included a set of nationally agreed coastal zone management objectives; arrangements for managing the Plan; greater community involvement; and innovation in coastal management mechanisms. The RAC argued that the success of the Plan would rely on the agreement of a common set of principles for governmental agencies and non-governmental bodies to use in coastal zone decision

⁷⁵ Haward, M. "Australian Coastal Management", 2.

⁷⁶ Resource Assessment Commission, Coastal Zone Inquiry, Draft Report, (Canberra: AGPS), February, 1993, 1.

⁷⁷ Resource Assessment Commission, *National Coastal Action Plan*, (Canberra: AGPS), November, 1993, vii.

⁷⁸ Ibid., 11-13.

making. The Final Report was submitted to the Prime Minister on 11 November 1993. It largely repeated the findings of the 1991 HORSCERA Inquiry but differed in its recommendation that the National Coastal Action 'Program' (NCAP) be established. The shift of wording from 'plan' to 'program' was deliberate, and aimed to demonstrate the government's use of a less top-down and more of a bottom-up approach to implementation. The main components of the NCAP included nationally agreed coastal zone management objectives; management of the Program through new arrangements; greater community involvement and an expansion of coastal management mechanisms.⁷⁹ The National Coastal Action Program formed a major element of the RAC's Final Report.

The policy document was 664 pages long and included a 516 page joint report, and a 166 page 'dissenting' report. Additionally, the RAC released a *Final Report Overview* that was 45 pages long which summarised the key themes of the Final Report in "plain English." The Final Report outlined what the problems were with the management of the coastal zone up to its release. Chapter 19 of the Final Report consisted of 69 specific recommendations in 13 different areas. Additionally, it endorsed the conclusions of the HORSCERA report in that "major management difficulties in coastal management arise from the accumulated impacts of numerous uncoordinated development decisions - the so called tyranny of small decisions." Thirty-seven of these recommendations were specific to the implementation of the

⁷⁹ Haward, M. "Institutional design and policy making 'down under'", 95.

⁸⁰ Resource Assessment Commission, Final Report Overview, (Canberra: AGPS), 1993, 1.

⁸¹ Resource Assessment Commission, Coastal Zone Inquiry, Final Report, (Canberra: AGPS), November, 1993, 381.

NCAP.⁸² The Final Report also recommended that the NCAP be adopted and implemented by the Council of Australian Governments (COAG). This suggestion reinforced the intergovernmental nature of the Program.

Similarly to the HORSCERA recommendations, the RAC Final Report endorsed that the Commonwealth should enact legislation named the Coastal Resources

Management Act. The RAC argued that this legislation "would facilitate the funding of coastal management activities in all spheres of government either in terms of direct expenditure by Commonwealth agencies or in grants to state and local governments." In addition, the Report emphasised that the Commonwealth should endorse market principles through different economic instruments and community principles, and provide them for local groups who are involved in managing coastal areas. On the use of economic instruments, the RAC noted that when

correctly applied...enable the recovery of costs associated with resource uses, encouraging more efficient use of those resources and providing incentives to minimise the cost of complying with standards for the use of the resources.⁸⁴

The Final Report specified that a National Coastal Management Agency; a board that represents the interests of the Commonwealth, state and local governments, and the indigenous people; a full time secretariat; and an independent chairperson should be established.⁸⁵ Under this framework, the Coastal Agency would report to COAG.⁸⁶ The Final Report emphasised that the roles of indigenous peoples in the management

⁸⁴ Resource Assessment Commission, Coastal Zone Inquiry, Final Report, 382.

⁸² Haward, M. "Institutional design and policy making 'down under", 96.

⁸³ Ibid

⁸⁵ Ibid., 366.

⁸⁶ Ibid.

of coastal areas should be examined further and supported. It can be argued that many of the recommendations of the Commonwealth Reports and Inquiries into the coastal zone have had a similar focus. Table 3.1. outlines the issues that were recommended by each of the reports.

Table 3.1. Summary of Recommendations Related to Institutional Arrangements to Manage the Australian Coastal Zone

Element	House of Reps	HORSCERA	ESD	RAC
A national coastal strategy	1980 ◆	1991 ♦	1992 •	1993 ♦
Commonwealth coastal zone legislation		•		•
Commonwealth Coastal Agency				•
Specific ministerial council	•			
An intergovernmental agreement		•	•	•
Integration of Commonwealth and state management	•	•	•	•
Financial assistance to state/local governments	•	•		•
Integration of local government		•		•
Regional basis to management			•	•
Community/citizen participation		•	•	•

Source: Haward, M. "Institutional design and policy making 'down under': developments in Australian and New Zealand coastal management", *Ocean and Coastal Management* 26, no.2, 1995: 99.

Although the Commonwealth announced in 1992 that it was formulating a national coastal policy, the funding for this policy was not announced until many years later. The government announced during the 1995-96 Commonwealth budget that a A\$53 million package was included for improving the management of Australia's coastal zone. Following this announcement a Working Group was established to formulate a national coastal policy. There were a number of objections to the Government's decision, first, the Commonwealth chose not to develop a Coastal Management Act and not to establish a National Coastal Management Agency.⁸⁷ Second, it was argued that another working group was not required for the reason that it was a mismanagement of funds. The government was reminded by the Democrats that the total spent on coastal inquiries since 1970 accumulated to around A\$100 million.⁸⁸ Nonetheless, the Interdepartmental Working Group was established and proceeded to complete *Living on the Coast: The Commonwealth Coastal Policy*. The Coastal Policy was launched by the then Federal Minister for the Environment, Senator Faulkner in May 1995.⁸⁹

The summary of the Coastal Policy states that the main aim of the policy "is to promote ecologically sustainable use of Australia's coastal zone." It also specifies that the main objectives are sustainable resource use, resource conservation, public participation, knowledge and understanding, and the use of principles to guide

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⁸⁷ Australian Democrats, "Coasts - major inquiry's recommendations 'beached'", Media Release, Monday November 28, 1994.

⁸⁸ Ibid.

⁸⁹ Commonwealth of Australia, *Living on the Coast: The Commonwealth Coastal Policy*, Department of Environment, Sport and Territories, (Canberra: AGPS), May 1995.

⁹⁰ Ibid.

decisions making.⁹¹ The aim of the Coastal Policy is to increase community involvement in coastal management and to address the coastal problems highlighted by the previous reports and to promote education and the improvement of knowledge for coastal planners, managers and users.⁹² The states and local governments are required to match the funding provided by the government as a way of continually financing the policy.⁹³ The ACF and the Wilderness Society supported the release of the policy. The Democrats, however, argued that it was "short sighted and failed to provide enough money to fix problems of sewerage outfalls and overcrowding on the coasts."⁹⁴

The NCAP was also released in 1995 as the implementation component of the Coastal Policy. It outlines the framework of the policy, the boundaries for state and Commonwealth responsibilities in coastal management, community participation, sustainable use of the coastal areas and Australia's international responsibilities. The NCAP contains a number of initiatives to assist in the development of long term strategic responses to coastal problems. One of these initiatives is the development of integrated coastal area management strategies that are based on cooperative efforts between the three spheres of government, community groups and industry. The

⁹¹ Ibid.

⁹² Ibid., iv.

⁹³ McLean, L. "\$53 million coastal package flags Labor's green comeback", *Australian*, Monday May 29, 1995: 3.

⁹⁴ McLean, L. "Coastal plan falls short: Kernot", Australian, Tuesday May 30, 1995: 4.

⁹⁵ Environment Australia, Portfolio Marine Group, Consultants Brief: Monitoring and Evaluation of the Coastal Action Program, (Canberra: AGPS), 28 February 1997; Haward, M. "Institutional framework for Australian ocean and coastal management", 31.

⁹⁶ Commonwealth of Australia, *Living on the Coast: The Commonwealth Coastal Policy, Summary*, (Canberra: AGPS), 1995.

NCAP also proposed the establishment of a National Coastal Advisory Committee whose role is to provide the Commonwealth government on coastal management issues. Despite this proposal, the Coastal Advisory Committee was never formed "with such advisory bodies seemingly being out of favour in Canberra."

The NCAP was endorsed by the following government in the *Investing in our*Natural Heritage statement made by the Minister for the Environment, Senator

Robert Hill in August 1996. Social Rescue 2000's establishment of a National

Representative System of Marine Protected Areas received continual support within the NCAP. Moreover, OR 2000's Marine and Coastal Community Network was seen as being important to the implementation of the NCAP and the RAC recommended an increase to their funding. Although the OR 2000 program was completed many of its components were retained through the NCAP.

During 1996, the newly elected Howard government partially privatised Telstra, the major government owned telecommunications organisation in Australia. As a result of the sale, the Commonwealth committed A\$2.5 billion to the Natural Heritage Trust (NHT). The NHT is administered jointly by Agriculture, Fisheries and Forestry Australia (AFFA), and Environment Australia. Close to A\$106 million was provided for the *Coasts and Clean Seas Initiative* that included plans for

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⁹⁷ Kay, R. and Lester, C. "Benchmarking the future direction for Coastal Management in Australia", 282.

⁹⁸ Environment Australia, Portfolio Marine Group, Consultants Brief: Monitoring and Evaluation of the Coastal Action Program.

⁹⁹ Resource Assessment Commission, Coastal Zone Inquiry, Final Report, 391.

¹⁰⁰ Commonwealth of Australia, "Natural Heritage Trust", http://www.nht.gov.au, date cited 25 October, 2001, and last modified 1999.

development and financial support of a national oceans policy.¹⁰¹ It is administered by the Marine and Water Division of Environment Australia.¹⁰² The *Coasts and Clean Seas Initiative* supports many of the programs that were established by previous policies including NCAP, such as Coastcare, MPAs and the Marine and Coastal Community Network.

The Coastcare program was established through the initial launch of the NCAP and received A\$23.5 million.¹⁰³ It is a significant component of the coastal initiatives as it facilitates community management of the coastal zone.¹⁰⁴ Coastcare is based on the Landcare program, however, in contrast to Landcare the activities are directed at publicly owned or managed coastal and marine environments.¹⁰⁵ Although a community based program, Coastcare is overseen jointly by the Federal, state and local governments. The Commonwealth, state and Territory governments match the funding for the coastal community grants. Local government, on the other hand "provides financial and in kind support for Coastcare projects."¹⁰⁶ Although it is described as a 'federal program' only one third of its funding is actually allocated by the Commonwealth. Kay and Lester point out, "a counter argument is that, without

¹⁰¹ Ibid

¹⁰² The Marine and Water Division was formally known as the Marine Group.

McLean, L. "\$53 million coastal package flags Labor's green comeback", Australian, Monday May 29, 1995: 3.

¹⁰⁴ Stocker, L. and Moore, S. "Community involvement in ocean and coastal policy in Australia", 1-3.

¹⁰⁵ Ibid

¹⁰⁶ Commonwealth of Australia, "Coastcare".

the Commonwealth's lead, the Coastcare program would not have become a reality in some states." ¹⁰⁷

The 'bottom-up' approach to implementation has ensured the continual community support of the Coastcare program. After the establishment of the Natural Heritage Trust, Coastcare became a major component of the *Coasts and Clean Seas Initiative* and is administered by a national office within the Marine and Water Division in Environment Australia. A Commonwealth Coastcare Manager is in charge of the office. The Coastcare groups have remained reasonably independent and some groups are referred to by different names depending on their state of origin. For example, Coastcare in Western Australia is known as Coastwest/Coastcare, while in Victoria it is known as Coastal Action/Coastcare. In some areas of New South Wales and Queensland Dunecare is also a major component of Coastcare.

Sponsorship by companies such as McDonalds has also been a main source of funding for Coastcare. Although it can be construed that sponsorship from a company such as McDonalds defies the purpose of the community based Coastcare organisation, it nonetheless, has aided in establishing wider community awareness and support. The McCare Program was launched in 1997 by McDonalds, Coastcare and Landcare groups, where McDonalds sponsored a structure for a national award system. Coastcare has also used media marketing techniques to enhance their message to the community. Land Rover Australia, for instance, sponsored Coastcare

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¹⁰⁷ Kay, R. and Lester, C. "Benchmarking the future direction for Coastal Management in Australia", 280.

¹⁰⁸ Commonwealth of Australia, "Coastcare".

during Coastcare week 1-7 December 2000. Celebrities such as tennis player Patrick Rafter have appeared on television commercials for Coastcare and Dunecare. The Annual Coastcare Awards remain, Ocean Care Day, the Coastcare Newsletter, fact sheets, and videos are just some of the marketing tools that Coastcare uses to target as many people that directly or indirectly use the coasts.¹⁰⁹ It is also through sponsorship that Coastcare relies less on government, or appears to have less 'top-down' influence and more bottom-up initiatives.

7. Coastal Zone Management - State Responses

The states and the Northern Territory have extensive responsibilities in coastal policy development and management of the coastal zone. The 1993 RAC *Coastal Zone Inquiry* emphasised that the states and the Northern Territory, and local governments are responsible for 95 per cent of expenditure on coastal zone management activities. One of the main priorities for the states is regulating local government control over coastal areas. Local governments also have important roles in coastal management. It is important to note that the local government roles often go unnoticed. Consequently,

potential conflicts arise between a local government authority keen to increase its revenue through rates and local charges and a state government concerned at limiting development in coastal areas, particularly those less developed or pristine areas.¹¹¹

¹⁰⁹ Coastcare, Strategic Plan for Sponsorship Marketing and Awareness Raising, January 1999.

¹¹⁰ Haward, M. "Institutional framework for Australian ocean and coastal management", 23.

Haward, M. "Improving management of the coastal zone enhancing intergovernmental coordination of an Australian Coastal Policy", *Submission to Resource Assessment Commission Inquiry into the Coastal Zone*, 1991.

The approval for developments in coastal areas have a marked impact on the coastal environment, however, such projects provide important sources of revenue for local government. Even though such approvals are often constrained by the structure of planning, and the extent to which local government is given autonomy in these decisions, these activities result in having a major influence on the coastal zone's affability and environment values.

All states and the Northern Territory underwent major reforms in their coastal policies during the mid 1990s. It became obvious to the Commonwealth that the states were wary of their actions throughout the inquiry process. The states feared that a national coastal policy had the capacity to mirror the intergovernmental arrangements of the Great Barrier Reef Marine Park. The Commonwealth, through the *Great Barrier Reef Marine Park Act* 1975 can exercise constitutional powers and override state decisions when necessary.

The Act "covers the field" of marine parks in the area defined under the Act for its operation, leaving no room for any state (Queensland) legislation. In spite of this legislation, the management of this marine park involves considerable cooperation between the Commonwealth and Queensland governments. Responsibility for Commonwealth lands, most notably in the coastal zone those areas associated with defence and navigation and the Jervis Bay Territory gives the Commonwealth a direct interest into coastal policy. 112

The states and the Northern Territory rejected the RAC's 1993 Report and argued that the Commonwealth needed to focus on a national approach to coastal management and while allowing them to continue with the management of coastal

¹¹² Ibid.

that outlined its perceived role in coastal management and deliberately did not mention the enactment of Commonwealth coastal legislation. Prior to the release of the NCAP, the states did not reveal their coastal programs or funding priorities until they "knew how much money was available in the national program." During 1995 to 1996 New South Wales, Queensland, Tasmania, Victoria, South Australia and Western Australia signed Memorandums of Understanding (MOU) for the implementation of the NCAP. The first draft of the MOUs required that the states follow the Commonwealth goals and objectives as stated within the Commonwealth Coastal Policy. This, in any event, caused more conflict between the states and the Commonwealth and as a result the MOUs were altered to accommodate each state.

The states were initially divided into two different groups on their implementation strategies and have, as a consequence, varying degrees of Commonwealth influence on their policy principles and objectives. South Australia and Queensland decided to focus on the allocation of funding due to the non legally binding nature of the MOUs. Victoria and Western Australia incorporated components of the MOUs into their existing programs which already had funding provisions for their recently implemented community coastal groups. They had also revised and upgraded their coastal advisory systems that formed the basis for assessment of most project proposals in the states at regional and state levels, and accordingly avoided the

Kay, R. and Lester, C. "Benchmarking the future direction for Coastal Management in Australia", 279.

¹¹⁴ Ibid., 280.

¹¹⁵ Ibid., 281.

setting up of new projects under the NCAP.¹¹⁶ The Commonwealth worked with each state individually and adjusted the MOUs according to the specific circumstances within each state.

Kay and Lester found that

some state's MOUs require that no Commonwealth funds will be provided for projects which conflict with the coastal management objectives and principles as described in the Commonwealth Coastal Policy 1995. They further specify that these Commonwealth objectives and principles do not cover state policies and procedures that are not 'shared' with the Commonwealth through the MOU.¹¹⁷

The implementation of the administrative arrangements outlined in the MOUs has proved to be difficult. The first meeting of the Intergovernmental Coastal Reference Group was delayed until May 1996, "and it was only after sustained pressure from the states that the Commonwealth agreed to convene the first meeting." The states came out favorably of the Coastal Policy process as they not only secured their own interests with the MOUs but they also received additional handouts from the Commonwealth. For instance, lighthouses were returned to the states through the Living on the Coast package. Senator Faulkner stated that by returning the lighthouses it was a form of "goodwill between all governments" in the improvement of the coastal area.

¹¹⁹ McLean, L. "\$53 million coastal package flags Labor's green comeback", 3.

¹¹⁶ Ibid., 281-2.

¹¹⁷ Ibid., 282.

¹¹⁸ Ibid.

¹²⁰ Ibid.

The MOUs were revised in 1997 and 1998 to include the *Coasts and Clean Seas* programs under the Commonwealth's NHT. Moreover, an Intergovernmental Coastal Reference Group was established to provide all governments an exchange of information on coastal management practices. Each states' and the Northern Territory's response to the MOUs and their coastal policies is outlined in Table 3.2.

Table 3.2 Outline of Current Status of State and Territory Coastal Policies.

State/Territory	Current status	Main instruments in the lead up to the release of Coastal policies
NSW	State Coastal Policy released in November 1997. New membership of Coastal Council was established in February 1999 under the Coastal Protection Act. The Act was amended after the Coastal Policy was released.	Commonwealth Coastal Policy; Coastal Protection Act 1979; state environmental planning policies, regional environmental plans; local environmental plans, development control plans, coastline management plans, estuary management plans.
VIC	Coastal Management Act 1995 created the Victorian Coastal Council and Regional Coastal Boards.	Draft Victorian coastal strategy; local coastal action plans (private and public land); coastal management plans (public land); planning schemes for coastal areas.
WA	Coastal Zone Council established May 1996. The Council is currently updating the 1983 government position paper on coastal management. There is a continuation of current nonstatutory coastal management system based on regional and local coastal management plans with the coastal activities of various government agencies coordinated by the Coastal Zone Council.	Commonwealth Coastal Policy; Coastal Management Position Paper (1983); regional and local strategic planning documents; statutory planning instruments.
SA	"Our Seas and Coasts" a Marine and Estuarine Strategy for South Australia was released in August 1998. Coastal Protection Act 1972 was updated and overseen by Coast Protection Board which develops coast protection plans to be implemented by local government.	Commonwealth Coastal Policy; Coastal Protection Act 1972; Discussion (Green) Paper released in 1992; Coast protection district management plans; policy on coast protection and new development; supplementary development plans (local government).
QLD	The Coastal Protection and Management Act 1995 commenced February 1, 1996.	Coastal Protection and Management Act 1995; state coastal management plan (proposed); regional coastal management plan (proposed); control districts.
Northern Territory	Coastal Policy released in 2001.	Commonwealth Coastal Policy; Coastal Management Policy 1985; coastal management plans; Darwin Foreshore Protection Plan.
TAS	State Coastal Policy came into operation October 10, 1996.	Commonwealth Coastal Policy; Coastal Policy must be taken into account in local planning schemes and planning applications; regional and local area coastal management plans.

Source: This table is based on and updated from Kay, R. and Lester, C. "Benchmarking the Future Direction for Coastal Management in Australia", *Coastal Management* 25, 1997: 277.

Tasmania, New South Wales and Western Australia began the review processes on the management of their coastal zones in 1994 and were closely followed by the other states of Australia. Victoria, South Australia and Queensland were unique in their approaches by either establishing or amending existing legislation for managing their coastal zones. Victoria had first hand experience in coastal management as the first ever attempt at successfully managing a part of Australia's coastal zone was in 1966 when the Port Philip Authority was created to manage Port Philip Bay. 121

Following the national coastal inquiries, the Victorian Government implemented changes to their coastal policy through the investment of the *Coastal Management Act* in 1995. This Act established the Coastal and Bay Management Council and three Regional Coastal Boards to develop Coastal Action Plans. The *Coastal Management Act* is a complete overhaul of previous coastal management arrangements. For the first time in Victorian political history, an Act regulated the use of public and private coastal land. Additionally, the Act finally deals with Port Philip Bay, along with the rest of the Victorian coast under a unified system. Its main aim is to manage the use of the Victorian coast based on sustainable use practices.

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¹²¹ Kay, R. and Lester, C. "Benchmarking the future direction for Coastal Management in Australia", 270.

¹²² Ibid., 276.

¹²³ Ibid.

Tasmania's changes to its coastal policy were also challenging as it possesses some of the most pristine coastal areas in the world, but on the other hand, also has patches of polluted coastline, particularly where industry is located. The Tasmanian Government began its changes to coastal zone management through public reviews and discussions. After the release of the Discussion Paper in 1994, the Tasmanian government developed a draft state Coastal Policy that was reviewed by the Sustainable Development Advisory Committee (SDAC). During this time, the SDAC was required to provide a report that outlined any modifications for the draft policy, and to advise state agencies and local government of a twenty-eight day response limit to the policy. It also had to "ensure public exhibition for a period of two months and seek public submissions within that period" and to consider all representations including the recommendation of a Tasmanian Sustainable Development Policy.

According to Davis, this policy development process ran relatively smoothly and received informed support from local communities.¹²⁷ The SDAC recognised that the draft coastal policy lacked many aspects of implementation procedures. Although state legislation provided some policy and statutory instruments for implementation, the SDAC had to prepare an "implementation package" that identified them and

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Davis, B. "Achieving sustainable development: scientific uncertainty and policy innovation in Tasmanian regional development", *Australian Journal of Public Administration* 55, no.4, December 1996: 102.

¹²⁵ Kay, R. and Lester, C. "Benchmarking the future direction for Coastal Management in Australia", 276

Davis, B. "Achieving sustainable development: scientific uncertainty and policy innovation in Tasmanian regional development", 102.

¹²⁷ Ibid., 103.

suggested new programs and codes of practice.¹²⁸ The SDAC also recommended that a non-statutory State Coastal Advisory Committee be established and that the Department of Environment and Land Management be the lead agency to deal with the coastal policy. The Final Report (Under Consideration) was then forwarded to the Minister for Environment in October 1995, and approved in Cabinet in mid December 1995. The State Coastal Policy is the only State Sustainable Development Policy enacted in Tasmania. It has no limit on its inland jurisdiction and extends to the limit of Tasmania's territorial sea, which includes all islands south of 39 degrees 12 minutes, and north of 45 degrees south, except Macquarie Island.¹²⁹ The Policy endeavours to guide decision making and facilitate integration of planning for the coastal zone.¹³⁰

Similarly to Tasmania, Western Australia began its review process in 1994 and aimed to complete an overview of the coastal zone without enacting legislation. The Minister for Planning instigated a review of coastal management in Western Australia on the recommendation of the Coastal Management Coordination Committee. The review was carried out to deal with the loopholes and overlaps in existing management approaches and the concern from the local governments that the state government was reducing resources for coastal management. The review was also initiated due to the "concern that any national coastal management program might interfere with the state's constitutional and legislative powers for coastal

¹²⁸ Ibid.

¹²⁹ The Sustainable Development Advisory Council, *Report on the Draft State Coastal Policy*, (Sustainable Development Advisory Council: Hobart) 1995, 3.

¹³⁰ Department of Environment and Land Management, *Tasmanian State Coastal Policy*, (Department of Environment and Land Management: Hobart), 1996, 5-6.

management."¹³¹ Similarly to other states reviewing their coastal management strategies, the Western Australian Review Committee called for written submissions from the public and held many regional hearings. As a result, there was a large public response with over 500 submissions that represented over 262 organisations, many of whom were consulted during the review process.¹³²

The review was completed in May 1995 and the Minister for Planning tabled a report to the State Cabinet outlining the government's response to the review in January 1996. The review itself demonstrated that major structural reform of the existing system of coastal management in Western Australia was unnecessary. It highlighted a number of inefficiencies in the existing system and recommended that a Coastal Zone Council be enacted to improve coordination between state agencies the three levels of government. The Council met for the first time in May 1996 and has provided financial support for coastal management activities at the local level. The review also recommended that the state government increase resources to coastal management.

¹³¹ Kay, R., Eliot, I., Panizza, V. and Donaldson, B. "Reforming coastal management in Western Australia", *Ocean and Coastal Management* 35, no.1, 1997: 14.

¹³² Ibid., 15.

¹³³ Ibid.

¹³⁴ Ibid. 1.

8. Conclusion

This chapter examined the ocean and coastal policy decisions of the late 1980s and 1990s. During this period, the Commonwealth recognised key policy areas that it had paid little, if not any, attention to in previous decades. Marine science and technology in Australia was recognised as being important to marine resource policy decisions. Institutional arrangements ensured an increase in communication between governments and industry. The Commonwealth, with some pressure from international actors, also inquired into the state of Australia's coastal zone. The jurisdictional issues that resulted in the path towards the *Commonwealth Coastal Policy* still conjured federal and state tensions. Each state maintained control over coastal management practices and incorporated sustainable development principles into their coastal policies.

The Commonwealth achieved a national Coastal Policy that unified the aims and principles of the nation's coastal management systems. It demonstrated through the Great Barrier Reef Marine Park that it could, if necessary, apply Commonwealth jurisdiction to override state authority. Although a Commonwealth Coastal Act was never going to eventuate lacking state and Territory support, the Coastal Policy was designed to leave enough scope to deal with coastal issues on local, state and federal levels.

The marine science and technology policies, ESD process, the IGAE and coastal initiatives reinforced that the Commonwealth did have a jurisdictional role in offshore and marine resource management, however, the states had ultimate control

over activities within territorial limits. The OCS, IGAE and ESD Strategy emphasised two factors relevant to oceans policy development. First, they established or built upon principles for marine resource management that were applicable to all levels of government. Second, each agreement has formed the framework for intergovernmental interaction that has become the basis of *Australia's Oceans Policy*.

The following chapter examines the external factors that have influenced the Commonwealth in its decisions over the offshore and marine resource issues before continuing with the chronological account of oceans policy development in Australia. In particular, it focuses on the ratified international agreements that directly influenced domestic political decisions relating to oceans and marine resource issues, such as the *United Nations Convention on the Law of the Sea*. It also analyses the domestic issues that were external to oceans policy development but nevertheless impacted the policy process.

CHAPTER FOUR

External Factors and their Impact on the Development of Australia's Oceans Policy

1. Introduction

Policy decisions made by governments over the management of ocean and marine resources are often influenced by external factors. These factors may be external to domestic policy making or external to a particular sector or regime. These external influences have influenced, encouraged and altered the path over the development and implementation of *Australia's Oceans Policy* and as a result are significant elements in its analysis. Such factors demonstrate that the decisions made by policy makers relating to ocean resource management, as analysed in previous chapters, are not made in a vacuum and that influence and/or pressure from international and domestic actors in other policy areas have effected these decisions.

The external factors in question appear in three different arenas: through the domestic political environment, through Australia's involvement in regional initiatives, and through Australia's ratification of international agreements. The domestic external influences that affect ocean and marine resource management in Australia do not always directly deal with marine management issues, however, their impact is crucial in understanding how and why the oceans policy was developed. This is demonstrated through the legacy of 'new federalism', state involvement in ocean governance and the changes to the Commonwealth government. The public

sector changes, in particular the enactment of the *Public Service Act* 1999 and the provision for the establishment of executive agencies, are also examined.

Australia's role in regional initiatives is the second external factor that has influenced domestic marine resource management. A shared maritime boundary with neighbouring states has ensured that the international dimension is part of the oceans policy development process. Australia's role in the Asia Pacific Economic Cooperation (APEC) forum, and APEC's Marine Resource Conservation Working Group (MRC), for example, has resulted in progress towards uniform standards regarding marine conservation within the region. The South Pacific region is also a priority to Australian maritime interests, particularly because of the fishing arrangements. Australia has been party to key ocean and marine resource initiatives including the South Pacific Forum; Convention for the Protection of the Natural Resources and Environment of the South Pacific Region; and Forum Fisheries Agency.

The first part of this chapter analyses the ratified international agreements whose principles, practical and detailed measures outline the responsibilities of states in the management of ocean and marine related activities. Australia is obligated to implement the legally binding measures, such as the United Nations Convention on the Law of the Sea, through domestic policies. Although declaratory and not legally binding, Chapter 17 of Agenda 21, which was established through the United Nations Conference on the Environment and Development, has also impacted oceans policy development in Australia. Whereas the Law of the Sea established the extent of Australia's maritime boundaries, Agenda 21 provided the framework for maritime

activities within those boundaries through three key principles aimed at sustainable development – 'integrated', 'precautionary' and 'anticipatory' actions.

2. International Instruments and Ocean Regimes

Up until the 1930s, Australia's role in international issues had been foreshadowed by the actions of the 'mother land'. Although self governing, Australia was a part of the British Empire and reflected British practice. After World War I, Australia increased its interest in foreign relations and the enforcement of the Statute of Westminster in 1931 enabled it to make laws with regard to extraterritorial issues. Discussions concerning Antarctica enabled Australia to exercise its sovereignty over its claimed territory in 1933 and demonstrated, *inter alia*, that it was capable of making independent decisions in the international arena.

With regard to world's ocean and marine resources, the most significant legal instrument is the *United Nations Law of the Sea Convention* 1982 (LOSC). Law of the Sea Conferences during the 1950s and 1960s focused on wealth, resource exploitation, states' and sovereign rights. By the late 1970s, the Third Conference focused on establishing rules and guidelines "refining what states can do in ocean areas, where they can do it, and how they are to exercise their rights and duties at

¹ Kaye, S. "Federal-state relations offshore", in McKinnon, D. Sherwood, D. eds. *Policing Australia's Offshore Zones: Problems and Prospects*, (Centre for Maritime Policy: University of Wollongong), 1997, 226.

² The Statute of Westminster was not enacted by Australia until 1942. Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims", *Marine Policy* 20, no.1, 1996: 29.

sea." The focus on ecosystem based measures reflected domestic discussions concerning the environment in Australia during this period.

LOSC provides the basis to oceans policy development in Australia for a number of key reasons. First, it outlines the extent of Australia's vast marine territory and articulates the Commonwealth's rights and obligations within that territory.

Moreover, the measures and principles have legal status through the ratification of the agreement and are incorporated into domestic policy. Second, the development of an Australian oceans policy has been used as part of an obligation under the Convention. Third, being party to LOSC has strengthened Australia's place in international relations concerning ocean and marine resource issues and provided an international dimension to the oceans policy.

2.1 The Law of the Sea

The United Nations Conferences on the Law of the Sea were the largest international conferences held over four decades. The conferences were organised into three meetings with each meeting addressing issues that were important at the time. The first Law of the Sea Conference was held between 24 February and 29 April 1958. The main focus of the meeting was to resolve the boundary issues that often resulted in conflict between nation states. Australia's role was pivotal during the first meeting of the Conference in ensuring that participants came to an agreement on the

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³ Herriman, M., Tsamenyi, M., Ramli, J. and Bateman, S. *Australia's Oceans Policy: International Agreements, Background Paper 2*, A Report Commissioned by Environment Australia, October 1997, available at http://www.oceans.gov.au.

definition of the continental shelf.⁴ Four conventions that were based on draft texts prepared by the International Law Commission were adopted and opened for signature as a result of the meeting - the *Convention on the Continental Shelf*⁵ the *Convention on the Territorial and Contiguous Zone*⁶, the *Convention on the High Seas*⁷ and the *Convention on the Fishing and Conservation of the Living Resources of the High Seas*.⁸ The Conventions became commonly known as the Geneva Conventions. Herriman, Tsamenyi, Ramli and Bateman argue that

these Conventions failed to clarify international law of the sea because states could pick and choose which Conventions they would ratify according to their perceived self-interest. Importantly, the Conventions also failed to address many important issues, the most pressing of which was the breadth of the territorial sea.⁹

The second Law of the Sea Conference was held between 17 March and April 26, 1960 and was convened largely to address the problematic issues from the first Conference. Nevertheless, the second meeting failed to achieve its objectives. The third Conference of the Law of the Sea was held between 1974 and 1982 and the outcome of the meeting was the *United Nations Law of the Sea Convention* 1982 (LOSC). It was the largest and longest exercise ever held by the United Nations and

⁴ Evans, N. *Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia*, (PhD thesis, University of Tasmania), 1998, 16.

⁵ The Convention on the Continental Shelf entered into force on 10 June 1964.

⁶ The Convention on the Territorial and Contiguous Zone entered into force 10 September 1958.

⁷ The *Convention on the High Seas* entered into force 30 September 1962.

⁸ The Convention on the Fishing and Conservation of the Living Resources of the High Seas entered into force 20 March 1966. See International Law Commission, http://www.un.org/law/ilc/index.htm; Herriman, M., Tsamenyi, M., Ramli, J. and Bateman, S. Australia's Oceans Policy: International Agreements.

⁹ Herriman, M., Tsamenyi, M., Ramli, J. and Bateman, S. "Background", *Australia's Oceans Policy: International Agreements*.

the delegates met fifteen times during the nine year period. Over one hundred and sixty countries participated in the Conference and the aim of it was to establish comprehensive legal regime for every dimension of global oceans policy.¹⁰

Australia included a state representative in its national delegation during the Conference in 1976. This not only contributed to the more consensual style of operation within the Australian delegation but also improved domestic intergovernmental relations.¹¹ The states' interests in the Law of the Sea were a result of the Commonwealth's 'new federalism' initiatives and their domestic interest in marine issues (see following discussions). The states also wanted to participate to ensure that their maritime boundaries and interests were protected.

Unlike the preceding conferences, the focus of the third conference was to examine environmental measures, particularly with regard to conservation of marine living resources. Australia aimed to have universal acceptance of the law of the sea despite objections from the United States over assertions of new maritime claims. ¹² Interestingly, Australia also encouraged the members of the Conference to focus on marine protection and this reflected the Commonwealth's position with domestic issues at the time, such as the *Offshore Constitutional Settlement* (OCS) and the Great Barrier Reef Marine Park (refer to Chapter Two and Three). Consequently,

¹⁰ Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 154.

Herr, R. and Davis, B. Of Federations and Fishermen: Australia, Canada and UNCLOS III, Australian Association for Canadian Studies Conference on Theory and Practice in Comparative Studies, Canada and Australia, Macquarie University, 23-24 August 1982.

Joyner argues that LOSC became the first attempt at a comprehensive legal framework that applied international environmental law to oceans.¹³

Australia ratified the *Law of the Sea Convention* on 5 October 1994 with the Convention entering into force on 16 November 1994, after the sixtieth document of ratification was lodged.¹⁴ LOSC establishes the universally agreed framework for the determining of boundaries including the EEZ,¹⁵ contiguous zone,¹⁶ continental shelves,¹⁷ and territorial seas.¹⁸ It also outlines the need for the protection of various marine environments¹⁹ and balances the rights of states to conserve fish stocks.²⁰ Special regimes for the fishing of anadromous and highly migratory fish species²¹ and the management and protection of marine mammals have also been determined by this Convention.²²

¹² Burmester, H. "Australia and the Law of the Sea", in Crawford, J. and Rothwell, D. eds., *The Law of the Sea in the Asia Pacific Region*, (The Netherlands: Martinus Niijhoff Publishers), 1995, 52.

¹³ Joyner, C. "The Antarctic Treaty System and the Law of the Sea – competing regimes in the Southern Ocean", *The International Journal of Marine and Coastal Law* 10, no. 2, 1995: 313.

¹⁴ Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims," 30.

¹⁵ LOSC, Article 33.

¹⁶ LOSC, Articles 55-75.

¹⁷ LOSC, Articles 76-85.

¹⁸ LOSC, Articles 2-32.

¹⁹ LOSC, Articles 192-237.

²⁰ LOSC, Articles 116-119.

²¹ LOSC, Articles 64-67.

Juda argues that LOSC did not adequately cover the issue of straddling and highly migratory fish stocks and that

Article 63 of the 1982 Convention provides that where the same stock or associated stocks are found both within the EEZ and in an area beyond and adjacent to it, the coastal state and other states are able to seek agreement, either directly or indirectly, through appropriate regional or subregional organisations, on measures needed for the conservation of stocks in the adjacent area.²³

Juda argues further that the ambiguity and "lack of precision" in these articles caused problems for coastal states and fishermen who tried to adjust to this new regime.²⁴

LOSC outlines the framework for domestic mineral exploration whilst establishing an International Authority to oversee deep seabed mining.²⁵ In addition, the Convention articulates that "states have the obligation to protect and preserve the marine environment."²⁶

Australia's attempt to link international law and Commonwealth domestic policy was, as Burmester argues "orthodox" in its approach.²⁷ Nevertheless this conservative approach did solve the domestic offshore disputes at the time.²⁸ It "led to a number of significant policy decisions, which all involve bringing Australian

²² LOSC, Articles 65 and 120.

²³ Juda, L. "The 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks: a critique", Ocean Development and International Law 28, 1997: 148.

²⁴ Ibid., 149.

²⁵ LOSC, Articles 133-185.

²⁶ LOSC, Article 192.

²⁷ Burmester, H. "Australia and the Law of the Sea", 51.

Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 17; Bergin, A. and Haward, M. "Australia's approach to high seas fishing", The International Journal of Marine and Coastal Law 10, 1995: 349-367.

law into line with certain provisions from the *Law of the Sea Convention*."²⁹
Australia has always taken this orthodox, cautious approach to the implementation of ocean policies and this is reflected in its negotiations over the OCS and other policies that led to the development of the oceans policy. For example, in late 1990, Australia was one of the last signatories to extend its territorial sea from three nautical miles to twelve. Up until then it had raised straight baselines on provisions from the 1958 *Convention on the Territorial Sea*. The proclamation, which was given domestic effect through the Commonwealth's *Sea and Submerged Lands Act* 1973, included all Australian territories, external territories and islands that are part of state territories.³⁰

Australia's intention to declare an EEZ was announced in 1991 and was formally proclaimed following ratification of LOSC in 1994. Australia's EEZ is the third largest in the world and LOSC provides Australia with the sovereign rights over living and non-living resources within its boundaries.³¹ The Commonwealth did maintain that the continental shelf regime and Australian Fishing Zone (proclaimed in 1979) should be kept completely separate to the EEZ.³² Although the fishing zone and the EEZ are identical in area the definitions were kept separate to avoid unnecessary amendments to legislation. The new contiguous zone and the EEZ were applied through the Commonwealth's *Maritime Legislation Amendment Act* 1994.

²⁹ Burmester, H. "Australia and the Law of the Sea", 51.

³⁰ Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims," 40.

³¹ Fisheries Research and Development Corporation, "Fisheries natural resources", <u>http://www.frdc.com.au/industry/resources.html</u>, date cited: 1 June 2003.

³² Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 158.

The consequences of proclaiming a territorial sea and EEZ have made an enormous impact on the claims and responsibility of Australia as a coastal state. It

is now recognised as having authority and responsibility to set total allowable catch, determine national harvesting capacity, and, if a surplus exists beyond that state's harvesting capacity but within the total allowable catch, to grant access to that surplus to fishermen and other states.³³

Juda argues that these changes have significantly impacted on global fisheries management where an estimated 95 per cent of total marine catches occur with national EEZs.³⁴

2.2 Prevention of Pollution

The following international agreements were the first steps in the development of a prevention of marine pollution regime and provided the framework for LOSC to deal with pollution. Numerous environmental disasters, such as the Torrey Canyon oil spill in 1968 and Santa Barbara Channel oil spill in 1969, mark a turning point where environmental problems became issues on the policy agendas of governments worldwide. It has been argued, however, that there have been positive repercussions from these pollution disasters.

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³³ Juda, L. "The 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks: a critique", 147.

³⁴ Ibid.

The first international legal instruments that dealt with the environmental disasters at sea included the 1969 Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil, (also known as the Bonn Agreement) and the 1969 International Convention Relating to the Intervention on the High Seas in Cases of Oil Pollution Casualties. Although the Conventions addressed the issues of oil spills at sea, they did not address other types of ship based pollution or stringent environmental controls.

The 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (the London Dumping Convention) entered into force 30 August 1975. It establishes methods of controlling numerous types of marine pollution especially through the dumping of waste and other matter. Closely following this, the 1973 International Convention for the Prevention of Pollution from Ships and its modified Protocol of 1978 (MARPOL 73/78) entered into force 2 December 1983. Its specific aims are highlighted in the Preamble that asserts that parties to the Convention need to be "conscious of the need to preserve the human environment in general and the marine environment in particular." The Southern Ocean, for example, was declared a "special area" under MARPOL in 1991. All operational discharges from vessels, except in dangerous situations, are prohibited in special areas.

³⁵ International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). Also see International Maritime Organisation at http://www.imo.org.

³⁶ Joyner, C. "The Antarctic Treaty System and the Law of the Sea", 313.

Although Australia has not been involved in or even geographically situated near the pollution disasters that instigated these international responses, the threat of a pollution disaster in Australian waters remains a priority. Both the London Dumping Convention and MARPOL became baselines for LOSC which includes provisions to deal with all forms of marine pollution.³⁷ Provisions from both MARPOL and LOSC were incorporated into Australia's domestic policy through the OCS's legislative package which included the enforcement of compulsory pilotage within some parts of the Great Barrier Reef Marine Park. Following this, Australia was the only state that gained an International Maritime Organisation sanction under the LOSC³⁸ to protect certain waters with a special status.³⁹ It is important to note that some LOSC measures are yet to be developed through domestic policies as a result of the Commonwealth's orthodox approach to policy making.

2.3 The Antarctic Treaty and Australia's Antarctic and Southern Ocean Maritime Responsibilities

The Southern Ocean is part of Australia's oceans territory and is subject to two overlapping international regimes, the Antarctic Treaty System and LOSC.

Australia's involvement in the Antarctic has been an integral part of international and domestic maritime relations and has therefore affected oceans policy development.

Whilst the LOSC clearly outlines the rights and obligations of states and their

³⁷ LOSC, Part XII, Article 194.

³⁸ LOSC, Part XII, Article 221 (6).

³⁹ Rothwell, D. "Australia and the Law of the Sea: recent developments and post-UNCED challenges", Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., *Oceans Law and Policy in the Post-UNCED Era: Australian and Canadian Perspectives*, (London: Kluwer Law International), 1996, 68.

adjacent waters, this is not entirely applicable to the Antarctic territory. Australia, as a claimant state, is obligated through the specifications of the Antarctic Treaty, its conventions and protocols to deal with activities that occur within the Australian Antarctic Territory and its adjacent waters.

The Antarctic Treaty was negotiated and signed in 1959. It establishes four major principles that are the crux to the Antarctic regime. First, the sovereign titles over Antarctic territories are frozen and the Treaty prevents new ones from being claimed. Accordingly, the claimant states continue to be responsible for their territories and abide by the rules of the Treaty. Second, the Treaty establishes that the Antarctic and Southern Ocean area is demilitarised and can only be used for peaceful purposes. This has caused difficulties for Australia to patrol its territory and, *inter alia*, to actively pursue illegal fishing. The third principle outlines the freedom of scientific activity, while the fourth states that any information gained from the scientific activity should be freely exchanged between the Antarctic Treaty Parties.

Article VI of the Antarctic Treaty specifies that the area south of 60 degrees South

Latitude is governed by the Treaty without distinction between the land and sea.

Australia has asserted jurisdiction over territorial seas to the limit of twelve nautical

⁴⁰ Article IV of the Antarctic Treaty.

⁴¹ Ibid., Article I.

⁴² Ibid., Article II.

⁴³ Ibid., Article III.

miles as specified in the LOSC and has also declared an Exclusive Economic Zone.⁴⁴ Although Article IV of the Antarctic Treaty specifies that claimant states cannot assert the territorial sovereignty in Antarctica and that no new claim can be made while the Treaty is in force, claimant states have avoided a conflict of interest with the Antarctic Treaty by using the definition of an EEZ as a more precise legal boundary to existing claims.⁴⁵

Australia's Antarctic Territory (42 per cent of the continent) is the largest area that has been claimed. When the Australian territorial sea was extended to 12 nautical miles in 1990, this also included the sea adjacent to the Antarctic territory. 46 Australia is responsible for the territorial sea adjacent to its claimed Antarctic territory through the Commonwealth's *Seas and Submerged Lands Act* 1973. Similar amendments have continued parallel to domestic legislative decisions in Australia. Other claimant states of the Antarctic territory have so far not challenged any of these claims, arguably to "evade opening a rupture in the cooperative spirit of the Antarctic Treaty System." It is interesting to note that non-claimant states do not recognise these legal boundaries since there are no legal sovereign claims in accordance to Article IV of the Treaty.

There are two parts of the Antarctic Treaty System, the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Protocol on

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⁴⁴ Joyner, C. "The Antarctic Treaty System and the Law of the Sea", 309.

⁴⁵ Ibid., 310.

⁴⁶ Ibid.

⁴⁷ Ibid., 311.

Environmental Protection to the Antarctic Treaty, that have impacted the development of Australia's Oceans Policy. CCAMLR is responsible for regulating fishing activities within Australia's Antarctic Territory for the reason that the Commonwealth did not declare an Australian fishing zone in this area. Participation in CCAMLR also restricts Australia in exercising its sovereign rights in the exclusive economic zone 60 degrees south latitude. The Convention entered into force on 7 April 1982 and its main objective is to conserve the marine living resources in accordance with the principle of ecosystem-orientated conservation and rational use.⁴⁸

The Convention does not include specific conservation measures to protect the whole fragile Antarctic ecosystem, however, it does enforce conservation controls over exploratory fisheries, precautionary catch limits and so on. This Convention has led the international actors to act collectively against the bycatch of non-fish species by restricting long line operations under its jurisdiction. During a meeting of CCAMLR in 1994, the member states endorsed Measure 29/XIII governing these operations.⁴⁹ Since then CCAMLR has continued to focus on illegal, unregulated and unreported fishing activities, in particular the catchment of the Patagonian Toothfish.⁵⁰ These

⁴⁸ Kriwoken, L. and Keage, P. "Antarctic environmental politics: protected areas", in Handmer, J. ed., Resource and Environmental Studies No.1: Antarctica, Policies and Policy Development, (Canberra: Centre for Resource and Environmental Studies, ANU), 1989, 37.

⁴⁹ Bergin, A. and Haward, M. "International environmental conventions and actions – implications for the fishing industry", *Proceedings Outlook*, Canberra 7-9 February, 1995: 287.

⁵⁰ See Bialek, D. "Sink or swim: measures under international law for the conservation of Patagonian Toothfish in the Southern Ocean", *Ocean Development and International Law* 34, no.2, April-June 2003.

fishing activities have heavily impacted on seabird population "to the extent that future sustainability of both group [sea birds and fish] has come into question."⁵¹

The *Protocol on Environmental Protection to the Antarctic Treaty* (the Madrid Protocol), on the other hand, has affected oceans policy development through the enforcement of ecosystem based principles and Australia's obligation to act according to environmental guidelines within its Antarctic territory. During the mid 1970s the *Convention on the Regulation of Antarctic Mineral Resource Activities* (CRAMRA) was established to regulate oil and mining exploration on the Antarctic continent and the Southern Ocean.⁵² The Convention was open for signature on 2 June, 1988 and it establishes, *inter alia*, principles, rules and norms that regulate Antarctic mineral activities after they have been deemed acceptable by the Antarctic Treaty Parties.⁵³ Although the Convention regulates mineral activities with stringent conditions protecting the continent's environment, it does not specify how these protected areas can apply to the Southern Ocean.

After six years, and twelve formal sessions of negotiations CRAMRA did not enter into force as a result of two factors.⁵⁴ First, parties were concerned whether mineral deposits actually existed on the Antarctic continent and second, if indeed these

⁵¹ See http://www.ccamlr.org.

⁵² Brennan, K. "Recent international developments regarding Antarctica", in Herr, R., Hall, R., and Davis, B. eds., *Issues in Australia's Marine and Antarctic Policies*, (University of Tasmania Press), 1982, 91.

⁵³ Elliott, L. *International Environmental Politics: Protecting the Antarctic*, (London: Macmillan), 1994.

⁵⁴ Beck, P. "The Antarctic resource conventions implemented: consequences for the sovereignty issue", in Jorgensen-Dahl, A. and Ostreng, W., *The Antarctic Treaty System in World Politics*, (The Netherlands: The Fridtjof Nansen Institute), 1991, 248.

minerals did exist would the appropriate technologies be available to exploit them. The focus then changed from mining to protecting the Antarctic environment as a result of international attention on the *Bahia Paraiso* oil spill of 28 January 1989 near Palmer Station on the Antarctic Peninsula. The infamous *Exxon Valdez* oil spill that occurred on 24 March, 1989 in Alaska also encouraged some of the Antarctic Treaty Parties to find an alternative measure to CRAMRA to protect the Antarctic environment. Domestic events of the time, such as the 1983 *Tasmania Dams Case* and the establishment of the Green movement encouraged Australia's participation in negotiating a protocol for the environmental protection of the Antarctic. During 1991 the Madrid Protocol was open for signature and entered into force on 15 January 1998, when Japan was the last of the 26 parties to ratify it.

The Madrid Protocol includes an annex that deals with prevention of marine pollution⁵⁷ similarly to Part XII, Article 94 of LOSC which aims to "minimise to the fullest possible extent" activities such as the releasing of toxic substances, pollution from vessels, pollution from exploration devices and pollution from other devices such as safety equipment.⁵⁸ Other articles of the *Law of the Sea Convention* include "the use of technologies or introduction of alien or new species" that may cause significant harm to other marine ecosystems.⁵⁹ Moreover, the Madrid Protocol's Annex IV makes provision for Annex I of MARPOL to apply to ships of all Treaty

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⁵⁵ Beck, P. "A new polar factor in international relations", *The World Today* 4, April 1989: 66.

⁵⁶ See "Spill threatens Antarctic habitat", *Age* 2 February 1989.

⁵⁷ Annex IV of the Madrid Protocol.

⁵⁸ Joyner, C. "The Antarctic Treaty System and the Law of the Sea", 314.

⁵⁹ LOSC, Part XII, Article 196, Paragraph 1.

parties in the Antarctic Treaty area. 60 This overlap and division of jurisdiction of international agreements has left Australia's domestic policy with a complicated, yet stringent framework for the development of *Australia's Oceans Policy*.

2.4 UNCED

The United Nations Conference on Environment and Development (UNCED) and subsequent measures have been a vital part of the oceans policy process. The precautionary principle and ecological sustainable development principles have provided the framework for environmental controls within domestic policies, including Ocean Rescue 2000; the Intergovernmental Agreement of the Environment; the *Commonwealth Coastal Policy* and the *National Ecologically Sustainable Development Strategy* (see Chapter Three). The major outcome of UNCED, Agenda 21, although not legally binding, has strengthened Australia's commitment to ecological sustainable practices in its marine management practices.

UNCED was held in Rio de Janeiro on 3–14 June 1992 and it addressed the environmental responsibilities of nation states including their marine and coastal ecosystems. The most significant outcome of this Conference was the new emphasis placed on principled decision making where numerous soft law⁶¹ principles were

⁶⁰ Joyner, C. "The Antarctic Treaty System and the Law of the Sea", 315.

⁶¹ Instruments such as Codes of Practice, Recommendations, Guidelines, and Standards and Declaration of Principles, are not legally binding and are referred to as "soft law". See Birnie, P. and Boyle, A. *International Law and the Environment*, (Oxford: Claredon Press), 1992, 16.

articulated to guide international and national policy reforms. ⁶² Furthermore, the participants of UNCED committed themselves to Ecologically Sustainable

Development principles. The term 'sustainable development' was first used in the
Our Common Future report by the World Commission on Environment and

Development that defined it as

development that meets the needs of the present without compromising the ability of future generations to meet their own needs.⁶³

The outcomes of UNCED included the Rio Declaration; a framework convention on climate change; a framework convention on biodiversity; Agenda 21; principles for forestry matters; and decisions on future actions.⁶⁴ The focus on sustainable development was extended during UNCED to include the precautionary approach/principle to policy development. Principle 15 of the Rio Declaration states

that in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. When there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.⁶⁵

In addition to the Rio Declaration, the Agenda 21 action plan has instigated principles and measures that have been essential to oceans policy development in

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⁶² Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., Oceans Law and Policy in the Post-UNCED Era, 1.

⁶³ World Commission on Environment and Development (Brundtland Commission), *Our Common Future*, (Melbourne: Oxford University Press), 1987.

⁶⁴ Davis, B. "National responses to UNCED outcomes: Australia", Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., *Oceans Law and Policy in the Post-UNCED Era*, 33.

Australia. Herriman, Tsamenyi, Ramli, and Bateman argue that the combined effect of LOSC and Agenda 21 has

proven to be a catalyst for an unprecedented level of activity around the world as various countries strive to develop and articulate their oceans policy.⁶⁶

Of particular importance to ocean resource management are Chapters 2, 14 and 17 of the action plan. Chapter 2 deals with trade whilst setting out a number of principles that include making trade and environmental issues "mutually supportive." Chapter 14 deals with sustainable development principles while Chapter 17 is holistic in its approach and deals with all aspects of marine and coastal environmental management through 137 recommendations. The approach provides the foundation that coastal states

commit themselves to integrated management and sustainable development of coastal areas and the marine environment under their national jurisdiction.⁶⁹

Arguably, this approach sacrifices definitional precision of many principles in Chapter 17 and other parts of Agenda 21.⁷⁰ Chapter 17 addresses fisheries and requires, *inter alia*, for coastal states to increase fisheries in their EEZ by "reducing

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⁶⁵ United Nations, "Principle 15", *UNCED Rio Declaration on the Environment and Development*, adopted at Rio de Janiero on 14 June, 1992 ILM 874.

⁶⁶ Herriman, M., Tsamenyi, M., Ramli, J. and Bateman, S. "The Law of the Sea and Agenda 21 – an evolving regime of state rights and duties for the ocean", *Australia's Oceans Policy: International Agreements*.

⁶⁷ Bergin, A. and Haward, M. "International environmental conventions and actions – implications for the fishing industry", 282.

⁶⁸ Johnston, D. "UNCLOS and UNCED: a collision of mind-sets?", in Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., *Oceans Law and Policy in the Post-UNCED Era*, 15.

⁶⁹ United Nations, "Chapter 17", Agenda 21: Programme of Action for Sustainable Development and the UNCED Proceedings, (New York: Oceana), 1992.

⁷⁰ Johnston, D. "UNCLOS and UNCED: a collision of mind-sets?", 15.

wastage, post-harvest losses and discards."⁷¹ Additionally, it encourages the development and use of environmentally sound technology whilst requiring states "to complete/update marine biodiversity profiles of their EEZs."⁷² It calls for flag states to minimise incidental catch, and monitor and set controls for compliance. Three important principles are declared through Chapter 17 that underpin ecologically sustainable development of ocean and marine resources – development must be 'integrated', 'precautionary' and 'anticipatory'.⁷³ Chapter 17 also declares that

states should convene as soon as possible an intergovernmental conference under United Nations auspices, taking account of relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention of the Law of the Sea on straddling fish stocks and highly migratory fish stocks.⁷⁴

As a consequence, the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was held through six meetings during the period of 1993-1995. By the time the Conference was completed in 1995 it produced a legally binding instrument, Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Agreement is nested in the framework established by LOSC, and also reflects the outcomes of UNCED and links the two major international

Pergin, A. and Haward, M. "International environmental conventions and actions – implications for the fishing industry", 283.

⁷² Ibid

⁷³ Herriman, M., Tsamenyi, M., Ramli, J. and Bateman, S. *Australia's Oceans Policy: International Agreements*.

⁷⁴ United Nations, "Chapter 17", Agenda 21: Programme of Action for Sustainable Development and the UNCED Proceedings, (New York: Oceana), 1992.

frameworks for oceans policy development.⁷⁵ Despite the revision of the document into a legally binding form during the fifth session of the Conference, agreement was still required on the area of enforcement. The states negotiated and resolved the enforcement issue during the sixth session.

The Straddling and Highly Migratory Fish Stocks Agreement is a complex document that is made up of 50 articles in 13 parts. Article IV of the Agreement articulates such principles as the use of total allowable catches and quotas, limits to fishing, gear restrictions, seasonal closures and the promotion of optimum utilisation. Article VI of the Agreement also stipulates that party states are to apply the precautionary approach to the management of these fish stocks whilst articles 8-13 and 17 deal with the coastal states' obligations to regional fishery management organisations. In addition, the Agreement underscores the need for more scientific data and for improved techniques when dealing with risk.

The United Nations Commission on Sustainable Development (CSD) was established by the United Nations General Assembly in February 1993 fulfilling the requirement of Chapter 38 in Agenda 21. The CSD is now the United Nation's

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Australia ratified the Agreement in December 1999 and it entered into force in December 2001. See Haward, M. "Management of marine living resources: international and regional perspectives on transboundary issues", 46.

⁷⁶ Haward, M. "Management of marine living resources: international and regional perspectives on transboundary issues", 46.

⁷⁷ United Nations, Convention on the Conservation and Management of Straddling Fish Stocks on the High Seas and Highly Migratory Fish Stocks on the High Seas, (New York: UN Department of Public Information), 1995.

⁷⁸ Haward, M. "Management of marine living resources: international and regional perspectives on transboundary issues", 46.

specialist organisation that monitors the implementation of Agenda 21 and deals with issues concerning the environment and sustainable development. The CSD regularly requires reports from individual states on their oceans. The tenth session of the CSD in April – May 2002 became a preparatory session for the ten year review process of Agenda 21. The preparatory information from this session and others, including a ministerial level PrepCom in Bali, led the process to the World Summit on Sustainable Development which was held in Johannesburg in September 2002. Over 22,000 delegates attended the Summit along with 100 heads of government to reiterate "the initial mandate and functions of CSD." The following session was held in New York in May 2003 and it enforced the Conventions and the on going global effort to achieve sustainable development.

2.5 UNEP

The United Nations Environment Program (UNEP) has continued to emphasise the importance of ecosystem based measures in decisions that effect the world's oceans and coasts. Of particular relevance to the oceans development process in Australia was the initiation of UNEP's Global Environmental Outlook (GEO) project. It was developed in response to the environmental reporting requirements of Agenda 21 and to a UNEP Governing Council decision of May 1995. The decision by the Council "requested the production of a comprehensive global state of the environment

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⁷⁹ Juda, L. "The 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks: a critique", 152.

⁸⁰ Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., Oceans Law and Policy in the Post-UNCED Era, 2.

⁸¹ UN Commission on Sustainable Development, "CSD 10th Session", http://www.un.org/esd/sustdev/csd/csd.htm, date cited: 1 July 2003.

report."82 The GEO project was then launched through a number of Conferences whose outcomes make up the report.

The Founex Report on Environment and Development was produced for the 1972

Stockholm Conference and the major marine concern identified was pollution.
Based on the findings of that report, the third GEO in the series (GEO 3) is an integrated assessment of global environmental trends for over thirty years from 1972 - 2002. It argues that in 1972 it was recommended that by improving management information through research, assessment and monitoring, and international cooperation, fisheries management approaches would improve. It acknowledges that "despite great improvement in the quality and scope of fisheries information, better fisheries management has generally not been achieved." Nevertheless, GEO 3 recognises that during the Stockholm Conference, fisheries issues were considered in economic and political terms. Thirty years later and the emphasis had changed on environmental problems.

GEO 3 addresses each region's coastal and marine areas separately to adequately assess the environmental impacts over time. Australia is recognised for developing oceans policies to address integrated coastal zone management and problems with pollution and the over exploitation of fish. It also recognises and commends the work of Landcare, Dunecare and Coastcare in environmental management in

⁸² UNEP, "GEO 3 fact sheet", http://www.unep.org/GEO/pdfs/GEO-3%20%Fact%20Sheet%20Asia%20&%20the.pdf, date cited: 24 June 2003.

⁸³ UNEP, "Chapter 2 – Coastal and Marine Areas", *Global Environmental Outlook 3: Past, Present and Future Perspectives*, (London, Earthsan Publications), 2002.

⁸⁴ Ibid., 183.

Australia.⁸⁵ As a result, these initiatives are also embedded in oceans policy development.

2.6 Regional Influences

Australia is party to a number of international agreements that specifically deal with oceans and marine issues in neighbouring regions. The bilateral and multilateral agreements provide region-specific instruments for the management of marine and coastal resources for both Australia and its neighbours. Instruments for regional cooperation in the Asia-Pacific region demonstrate that boundaries are artificial and that the activities beyond these boundaries are important and are still considered part of Australia's maritime responsibilities. Therefore, decisions affecting Australia's surrounding regions have had an enormous impact on oceans policy development.

The Asian region is Australia's largest export market and Australia will always have a vested interest in its closest continental neighbour. The marine and coastal management practices in neighbouring states are also closely monitored by Australia for trade concerns as well as environmental effects. The Asia Pacific Economic Cooperation (APEC)⁸⁶ has provided an arena for its Asian members to develop measures specific to the region on various issues including the conservation of marine resources.

85 UNEP, "GEO 3", http://www.unep.org/GEO3.pdf, date cited: 24 June 2003.

The Asian region's management of marine and resources is particularly important economically and environmentally as the area boasts many states that are offshore oil and mineral producers. Moreover, many of the region's states depend economically and socially on their fishing industries. 'Sustainable development' is a widely interpreted term in the Asian region due to the strong economical ties to ocean resources.

The Marine Resource Conservation Working Group (MRC) is comprised of representatives from each APEC economy with ocean related responsibilities. It was established in 1990 to ensure that socio-economic and environmental considerations are taken into account in the protection of marine resources.⁸⁷ The aim of the Group is to implement the *APEC Action Plan for Sustainability of the Marine Environment* which was endorsed in June 1997. During a meeting of APEC-MRC in May 2001, three key objectives were identified for the implementation of the Action Plan, first, to use integrated approaches to coastal management; second, the prevention, reduction and control of marine pollution; and third, sustainable management of marine resources.⁸⁸

Australia's involvement in MRC has been integral to oceans policy development, in particular with the fulfilment of regional objectives, and the fifteenth meeting was

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⁸⁶ APEC's work focuses on the whole Pacific region, as well as Asia, and has several member states from North and South America.

⁸⁷ APEC, "Working Groups and Expert Groups –MRC", http://www.apecsec.org.sg/workgroup/marine_upd.html, date cited: 1 August, 2002, Date last modified, 16 May, 2002.

held in Canberra in June 2002. The MRC has played a pivotal role in integrated ocean and coastal programming and its communiqué for its Canberra workshop in June 2002 suggested that further developments should be referred to an informal group on ocean policy to strengthen MRC policy role in ocean and coastal matters.⁸⁹ The MRC Group contributes its findings each year to the World Summit on Sustainable Development.

Australia is also involved with ocean and marine issues in the South Pacific region. The relationship between Australia and the South Pacific nations has resulted in the increased protection and integrated management of marine resources. The South Pacific nations are all islands and their social and economic interests lie in coastal and marine activities. The ocean territory makes up 98 per cent of the region's total area with the land totalling an area of only 550,000 kilometres squared. The main fishing activities in the area are undertaken by distant water fishing nations. The Pacific nations are concerned with the preservation of the marine environment and in particular concerns about "land based pollution, hazardous wastes disposal and harmful seabed activities."

Australia's interests in the area include being a member of the South Pacific Forum, the central regional agency that supports the activities in the region, and which

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⁸⁸ APEC, "Working Groups and Expert Groups –MRC", http://www.apecsec.org.sg/workgroup/marine_upd.html, date cited: 24 June 2003, Date last modified, May, 2003.

⁸⁹ Ibid.

⁹⁰ Tutangata, T. and Power, M. "The regional scale of ocean governance regional cooperation in the Pacific Islands", *Ocean and Coastal Management* 45, 2002: 873.

contributes substantial aid and assists in defence cooperation. Australia has played a large role in the implementation of Agenda 21 in the South Pacific region and has adopted a number of approaches to integrate its expertise on ocean and marine management with the needs of the region. The South Pacific Regional Environment Programme (SPREP) is a multilateral arrangement that is made up of key states that are involved with the South Pacific region and is the South Pacific component of the UNEP Regional Seas Program. Australia contributes 20 per cent of the core funding to the programme (which in 2001 was A\$1.6 million).

SPREP has many programs in the area of marine and coastal environment, including an environmental impact assessment program and a marine pollution assessment program aimed, *inter alia*, to develop monitoring capabilities throughout the region and identify marine pollution types and sources. ⁹⁵

Australia is also a party to the *Convention for the Protection of the National*Resources and Environment of the South Pacific Region. The Convention and its protocols provide the framework for the protection, management and development of the marine environment and its resources in the South Pacific region and the eastern part of Australia. Together SPREP and the Convention provide a body of rules that

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⁹¹ Bergin, A. and Michaelis, B. "Australia and the South Pacific: implementing the UNCED oceans agenda", *Marine Policy* 20, no.1, 1995: 47.

⁹² Australia is also involved in a number of bilateral agreements in the region that include the Torres Strait Environmental Management Committee and the Australia-France Arrangement for Cooperation in Marine Science and Technology.

⁹³ Bergin, A. and Michaelis, B. "Australia and the South Pacific: implementing the UNCED oceans agenda", 49.

⁹⁴ Department of Foreign Affairs and Trade, "SPREP", http://www.dfat.gov.au/geo/regional_orgs/sprep.html, date cited: 24 June 2003. Also see SPREP, http://www.sprep.org.we.

⁹⁵ Bergin, A. and Michaelis, B. "Australia and the South Pacific: implementing the UNCED oceans agenda", 49.

⁹⁶ Ibid., 52.

are integral to Australia and the South Pacific region and are recognised in *Australia's Oceans Policy*.

In addition, Australia is a member of the Pacific Forum Fisheries Agency (FFA), which is the main fisheries body in the South Pacific region, and a member of the Forum Fisheries Committee that reports to the South Pacific Forum. Australia is supportive of the Pacific states in these forums, the FFA Convention and their stance on high seas fishing including highly migratory species such as tuna. The South Pacific states recognise that the irresponsible fishing practices such as driftnet fishing have the potential to negatively impact their fisheries. As a consequence, Australia and the island states instigated the *Wellington Convention* which "prohibits nationals and vessels of signatories to the Convention from engaging in driftnet activities in the Convention area." This area includes the EEZs of the South Pacific countries and adjacent high seas.

The Western and Central Pacific (WCP) is the largest and most productive tuna fishery in the world. The FFA Convention recognised that the Pacific islands alone could not adequately conserve and manage their highly migratory tuna stocks. As a consequence, in 1994 the first session of a Multilateral High Level Conference (MHLC) was initiated by FFA members to address this concern and it was viewed as

⁹⁷ Ibid., 53. Australia ratified the Convention on 6 July 1992. Also see Bergin, A., Haward, M., Russell, D. and Weir, R. "Marine living resources", in Kriwoken, L., Haward, M., VanderZwaag, D. and Davis, B. eds., *Oceans Law and Policy in the Post-UNCED Era*, 184.

⁹⁸ Cartwright, I. and Willock, A. "Oceania's birthright: the role of rights based management in tuna fisheries of the Western and Central Pacific", in Shotton, R. ed., *FAO Fisheries Technical Paper 404/1 – Use of Property Rights in Fisheries Management*, Proceedings of the FishRights99 Conference, Fremantle, 11-19 November, 1999.

"the most significant change to the institutional environment of the WCP." The MHLC process was concluded after five years and resulted in the development of the *Convention of the Conservation and Management of Highly Migratory Fish Stocks in Western and Central Pacific Ocean* which was open for signature in 2000. The Convention is yet to come into force. 101

Particular global attention has been paid to the South Pacific tuna fishery where it has been found that it "offers a model of international cooperation for open sea fishing that may prove to be the first sustainable, multinational ocean fishery in the world." It was also argued in GEO 3 that the trend towards integrated planning and development of ocean and marine resources through national, regional and global initiatives is 'encouraging.' 103

Whilst regional initiatives have impacted the development of the oceans policy in Australia, the South Pacific nations have closely observed the oceans policy development. It has been suggested that similar policy developments may be considered by the islands for the management of their marine resources. ¹⁰⁴ Bergin and Michaelis argue that due to the financial assistance, economic and political

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⁹⁹ Ibid.

¹⁰⁰ See http://www.unescap.org.mced2000/pacific/background/mhlc.htm

Australia ratified the Convention on 16 September 2003. See Joint Statement by Minister for Fisheries, Forestry and Conservation, Senator Ian MacDonald, and Minister for Foreign Affairs, Alexander Downer, Australia Ratifies Fisheries Treaty, Media Release, 16 September 2003. Also see http://www.oceanlaw.net

¹⁰² UNEP, "Chapter 2 – Coastal and Marine Areas".

¹⁰³ UNEP, "GEO 3 fact sheet", http://www.unep.org/GEO/pdfs/GEO-3%20%Fact%20Sheet%20Asia%20&%20the.pdf, date cited: 24 June 2003.

¹⁰⁴ Bergin, A. and Michaelis, B. "Australia and the South Pacific: implementing the UNCED oceans agenda", 62.

interests, South Pacific marine resource issues will continue as priority to Australia. 105

3. External Domestic Influences

This part of the chapter now turns to domestic decisions that had an effect on marine resource management in Australia. They did not always directly deal with ocean and marine management issues, however, domestic decisions have significantly impacted oceans policy development. For example, Fraser's 'new federalism' was developed to re-admit state participation in major policy areas. The politics of the day and the uncertainty between the states and Commonwealth were a critical dimension of the negotiations over the OCS.

The changes to the public sector that occurred during the 1990s appear on the outset irrelevant to ocean related matters. It is these changes, nonetheless, that shaped the institutions introduced to implement the oceans policy. In particular, the Commonwealth's *Public Service Act* 1999 provides for the establishment of executive agencies and new measures for human resource management. The National Oceans Office (NOO) was established as an executive agency through *Australia's Oceans Policy*. The budgetary reforms during this time have also allowed for changes to ocean management expenditure in relevant Commonwealth departments.

105 Ibid.

3.1 The Legacy of New Federalism During Oceans Policy Development

During their time in government, Prime Ministers Whitlam, Fraser and Hawke all attempted to introduce what was termed 'new federalism'. Their basic aim was to alter Commonwealth/state relations so that governments would not endure the difficulties that were normally associated with intergovernmental policy negotiations. Consequently, the ocean and marine resource policies that were developed during 'new federalism' were shaped by the condition of intergovernmental relations at the time. For instance, Whitlam's new federalism, also described as 'coercive federalism,' resulted in the Commonwealth gaining excessive power over offshore resources. Whitlam was quick to assert Commonwealth sovereignty from the low water mark by introducing the *Seas and Submerged Lands Act* 1973.

Once Fraser obtained the leadership of the Liberal Party and government, he reworked the party platform and emphasised a 'cooperative new federalism' prior to the 1975 election. The aim of this approach was to restore the federal balance and readmit state participation by returning to pre-Whitlam arrangements through the OCS. By doing so, Fraser eased intergovernmental relations, however, some authors argue that his 'new federalism' achieved little else. Fraser ensured that the OCS reflected the government's new approach to intergovernmental negotiations and as a

Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims," 35.

Evans, N. Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia, 149. See also Galligan, B and Fletcher, C. New Federalism, Inter-governmental Relations and Environment Policy, (Canberra: Federalism Research Centre, The Australian National University), 1993.

result the OCS "remains the only, and therefore the most significant, legacy of the Fraser Government's 'new federalism'." ¹⁰⁸

Nevertheless, the cooperative approach to federal relations also extended state participation in international matters. The states pressed the Commonwealth during a Premiers' Conference in 1977 to be included in the third Law of the Sea Conference. Cooperation was evident in intergovernmental negotiations and a 'states advisor' joined the national delegation for the Conference session beginning in mid 1978. Herr and Davis argue that "were it not for the serendipity of 'new federalism', it is quite conceivable that the Australian states could have been left out." 110

The election of the Hawke government in 1983, once again, changed the emphasis of intergovernmental negotiations. For instance, state participation in international matters became minimal, and the focus of the OCS changed from the original 'organic' design to a sectoral approach to implementation.¹¹¹ Nevertheless, once the legislative base of the OCS was proclaimed, further changes to intergovernmental arrangements over the offshore did not eventuate.¹¹²

¹⁰⁸ Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims," 36.

¹⁰⁹ Herr, R. and Davis, B. Of Federations and Fishermen: Australia, Canada and UNCLOS III.

¹¹⁰ Ibid

¹¹¹ Haward, M. Federalism and the Australian Offshore Constitutional Settlement, (PhD Thesis, University of Tasmania), 1992.

¹¹² Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims," 38.

Prime Minister Hawke launched his 'new federalism' in July 1990 where he aimed "to form a closer working partnership between the three levels of government." Similarly to previous attempts at 'new federalism', Hawke wanted to improve cooperation between governments. A number of Special Premiers' Conferences were devoted to cooperative federalism and there was potential for significant reform to Australian federalism. This process stalled during a challenge to Hawke for the leadership of the Australian Labor Party by Paul Keating. Hawke was eventually defeated by Keating who became Prime Minister in December 1991. Keating did, however, release a government statement *One Nation*. Nevertheless, the Keating government was "quickly identified as having no conceptual interest in federalism" and the strictures of federalism remained. 114

The implementation of ocean and marine resource policies during the establishment of each government's new approach to federalism was difficult to administer.

O'Faircheallaigh, Wanna and Weller argue that

for public sector managers, federations raise the level of uncertainty in governance. Managers within a federal structure experience uncertainty when there is dispute over which government has carriage of policy. Uncertainty can also be expressed in the reluctance of policy makers to accept responsibility and accountability for policy formulation and implementation.¹¹⁵

¹¹³ Hawke, R. "Address to the National Press Club", Australian, 20 July 1990.

Prasser, S. Advisory Body Overboard: The Sinking of ACIR, Paper presented at Public Policy Seminar, Deakin University, 22-23 January, 1992.

O'Faircheallaigh, C., Wanna, J. and Weller, P. *Public Sector Management in Australia: New Challenges and Directions*, 2nd ed, (Macmillan Education: Australia), 1999, 99.

Subsequently, the 'uncertainty' of the public service contributed to the process of change within its own administration. This, in addition, impacted the ocean and marine resource policy development process in Australia.

3.2 Changes to the Public Service and the Development of Ocean Institutions

The changes to the public sector are significant to oceans policy development for a number of reasons. The shift from the traditional bureaucratic process to public management established practices focused on results and outputs in Commonwealth departments. The emphasis on fulfilling aims and evaluating results has been incorporated into *Australia's Oceans Policy* (see Chapter Six for further details). Budgetary reforms have changed the public service spending culture which has resulted in a different set of financial responsibilities to those involved in the development of the oceans policy and its implementation.

The reforms to the Australian Public Service (APS) were initiated by the Hawke government 1982 which resulted in the first official document, *Reforming the Australian Public Service*. This was followed by another report in 1987, however, it was concerned with the results of financial management rather than an extensive review of the whole APS. 117

¹¹⁶ Commonwealth of Australia, Reforming the Australian Public Service: A Statement of Government Intentions, (Canberra: AGPS), 1983. Also see Stewart, J. ed., From Hawke to Keating: Australian Commonwealth Administration 1990-1993, (Centre for Research in Public Sector Management: University of Canberra), 1994.

Department of Finance, FMIP and Program Budgeting: A Study in Implementation in Selected Agencies, (Canberra: AGPS), 1987; This was followed by Department of Finance, Financial Management Improvement Program Report, (Canberra: AGPS), 1988.

The changes to the APS during 1992 and 1996 when the Keating government was in power were also limited, nevertheless, they established the framework for further change. A discussion paper by Peter Reith was released in 1996 and it highlighted the criticisms of the APS and proposals for change. In summary, the paper urged the government to simplify the *Public Service Act* by removing specific elements addressing employment regulations and industrial relations whilst ensuring that expectations, provisions and responsibilities are expressed succinctly.

After the change of government in 1996, the Howard government began its workplace relations reform agenda. The revisited the *Public Service Bill* 1997 was introduced by the Minister Assisting the Prime Minister for the Public Service in June 1997. The process of passing the Bill took an extended period of time as the Senate disagreed over a number of specific clauses. The Commonwealth's *Public Service Act* 1999

greatly simplifies the workplace relations agenda by removing unnecessary prescription and providing for a values-based APS, rather than one driven by rules and regulations that only a few of the then 150,000 public servants really understood.¹²²

¹¹⁸ Shergold, P. "Like a rolling stone? Change in the public service workplace", *Canberra Bulletin of Public Administration*, no.99, March 2001: 21.

¹¹⁹ Reith, P. Towards a Best Practice Australian Public Service, (Canberra: AGPS), 1996.

O'Faircheallaigh, C., Wanna, J. and Weller, P. Public Sector Management in Australia: New Challenges and Directions, 155. Also see Clark, C. and Corbett, D. eds., Reforming the Public Sector: Problems and Solutions, (St Leonards: Allen and Unwin), 1999.

O'Faircheallaigh, C., Wanna, J. and Weller, P. Public Sector Management in Australia: New Challenges and Directions, 155.

¹²² Shergold, P. "Like a rolling stone? Change in the public service workplace", 22.

The previous *Public Service Act* 1922 was so detailed and complex that rather than implementing policies, most departments spent their time trying to achieve results abiding by the stated rules. The new Act has three key features that distinguish it from the old; the values orientated approach; the role of the Public Service Commissioner and the new Code of Conduct; and the appointment and termination of Secretaries.¹²³ The Public Service Commissioner promotes and evaluates the code of conduct and provides an annual report to parliament on the state of the public service. Secretaries have wide managerial powers as head of agencies and they are designated as the formal employer of the agency.¹²⁴ The *Public Service Act* enables individual agencies to establish the terms and conditions for employment so that it suits the needs of the agency. Shergold argues that "the Act brings employment in the APS into line with the arrangements that apply to the rest of the work force, while protecting the special character of the APS."¹²⁵

The Act also provides the legal mechanisms for government to establish Executive Agencies. The idea to develop executive agencies that deliver specialised services free of central department strictures originated in the United Kingdom. Part 9, which established provisions for executive agencies, was added to the *Public Service Bill* before Parliament by the Department of Prime Minister and Cabinet

who saw the need for a structural arrangement falling somewhere between that of a departmental division and that of

Halligan, J. "A comparative perspective", Canberra Bulletin of Public Administration, no. 97, September 2000: 28.

¹²⁴ O'Faircheallaigh, C., Wanna, J. and Weller, P. *Public Sector Management in Australia: New Challenges and Directions*, 155.

Shergold, P. "The Public Service Act and workplace relations: complementary reforms", Canberra Bulletin of Public Administration, no. 97, September 2000: 19.

a statutory authority, allowing a degree of operational independence and a separate organisational base for senior public officials with specialised cross departmental functions. 126

In addition, the inclusion of a provision for executive agencies in the Act enabled the government to separate "the principal (the minister and policy staff) from the implementing agency." The agencies are created by notice in the *Gazette* by the Governor General and are not statutory bodies. Nevertheless, each executive agency must submit an annual report to its Minister to present to Parliament. The Ministers can set the remuneration and conditions of appointment of the heads of executive agencies. 129

The establishment of NOO as an executive agency has meant that the administration of the oceans policy has been structured where the Minister can make direct decisions regarding the implementation of the policy. In addition, NOO concentrates only on oceans policy implementation without the affiliation or control of other government agencies (see further discussions in Chapter Six).

The establishment of NOO has also reflected the new reform agenda that aims to create a competitive environment for the APS with "contestability, value for money and a focus on client service."¹³⁰ The APS has gone through the process of

O'Faircheallaigh, C., Wanna, J. and Weller, P. Public Sector Management in Australia: New Challenges and Directions, 155.

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¹²⁶ Wettenhall, R. "These executive agencies!" *Canberra Bulletin of Public Administration*, no. 106, February 2003, 11.

¹²⁷ O'Faircheallaigh, C., Wanna, J. and Weller, P. *Public Sector Management in Australia: New Challenges and Directions*, 155.

¹²⁸ Wettenhall, R. "These executive agencies!" 12.

¹³⁰ Shergold, P. "The Public Service Act and workplace relations: complementary reforms", 19.

devolution where central controls are removed and financial and personnel responsibilities are located at the workplace level.¹³¹ According to O'Faircheallaigh, Wanna and Weller devolution is the process where the decision making powers and responsibilities are transferred to lower levels of an organisation. Officials who implement policies have the power to make judgements on how and what aspects of the policy should be delivered.¹³² Decentralisation, on the other hand, is the process where only administrative units are distributed and the decision making remains in the central offices. For devolution to occur some decentralisation must be present within the organisational structures.¹³³ The way the NOO is structured as an executive agency allows for instant devolution of responsibilities where decision makers are also involved with the policy implementation process.

Since Federation, portfolios and departments have grown so large that budgetary issues have become a major focus for the government of the day. Different methods of budgetary restraint were attempted, however, the reforms did not address the main causes of problems. During the 1970s, governments used cash limits on departments and limited the number of employees in each agency to bring down spending.¹³⁴
These methods had little success and departments found loopholes in the controls.

¹³¹ Ibid

¹³² O'Faircheallaigh, C., Wanna, J. and Weller, P. *Public Sector Management in Australia: New Challenges and Directions*, 88.

¹³³ Ibid., 88. Also see Task Force on Management Improvement, *The Australian Public Service Reformed: An Evaluation of a Decade of Management Reform*, (Canberra: AGPS), 1992, 89. This report makes a sharp distinction between the terms "devolution" and "decentralisation" as the confusion between the terms "was the source of many problems relating to implementation reform." Peters, B. and Savoie, D. *Taking Stock: Assessing Public Sector Reforms*, (Canadian Centre for Management Development: McGill-Queen's University Press) 1998, 288.

¹³⁴ O'Faircheallaigh, C., Wanna, J. and Weller, P. *Public Sector Management in Australia: New Challenges and Directions*, 131.

By the 1980s, predetermined budgetary projections had to be agreed upon by the Department of Finance. To avoid the end of year expenditure surge that was becoming customary in departments, the Commonwealth imposed a clawback mechanism in 1986. This annual clawback is called the 'efficiency dividend' "which deducts 1.25 per cent per annum from the running costs of departments (imposed on the portfolio)."135 The 1990s saw a shift towards output budgeting, total cost accounting, audits, enterprise bargaining, outsourcing and performance benchmarking.¹³⁶

Although the new accounting instruments are a requirement of the NOO, the funding for the development of Australia's Oceans Policy was not funded through established departments but through the Natural Heritage Trust. This resulted in a less conflicted policy development process that was not reliant on financial cutbacks in other policy areas.

4. Conclusion

The external factors that were examined in this chapter have contributed to the development of the ocean and marine resource policies in Australia by shaping the views of the decision makers involved in the process. The Law of the Sea and Agenda 21 provided the framework for an integrated, ecosystem based oceans regime that is reflected in domestic oceans policies. It was argued that the neighbourhood activities that occur beyond Australia's 'artificial' ocean boundaries

¹³⁵ Ibid., 132.

¹³⁶ Ibid., 138.

affect the state of Australia's ocean resources and as a result, Australia's participation in regional instruments has also impacted the oceans policy process.

The second part of this chapter argued that in addition to international arrangements, domestic factors external to a particular sector or regime contributed to oceans policy development. The legacy of 'new federalism' altered intergovernmental relations which affected OCS development and implementation. Changes to the APS not only assisted in accelerating the development of *Australia's Oceans Policy*, but provided for new arrangements for the primary administrator, NOO, to be established as an executive agency.

The following chapter examines the draft policy documents including issues and background papers that were released during the development of *Australia's Oceans Policy* in the years 1997 and 1998. The public and nongovernmental organisations' responses are analysed along with the development of new institutional arrangements to oversee the development and implementation of the policy.

CHAPTER FIVE

Australia's Ocean Policy – The Development Process 1997-1998

1. Introduction

Examination of the development and design of a policy process provides an insight into the aim and objectives of the decisions made by policy makers, governmental departments, and stakeholders. A number of factors make the development and design stage of *Australia's Oceans Policy* particularly interesting. The first and foremost factor is that a comprehensive and integrated oceans policy has never been attempted by the Australian Commonwealth, or by any other federal nation. Second, during policy development Commonwealth agencies coordinated relationships with each other, states and Territories, stakeholders and nongovernmental organisation (NGOs) for input in the process. It is found that the relationships between these actors during 1997 to 1998 influenced the development and membership of new ocean institutions. Third, the methods proposed to implement the policy are new and untried.

The chapter provides a chronological analysis of the development of *Australia's Oceans Policy*. Interestingly, this policy initially transcended two Commonwealth governments – the Australian Labor Party and the Coalition respectively - underlining an unusual bipartisan support. Late in his term in office, Prime Minister Keating announced the intention to implement a comprehensive marine policy. The impact of the change of government following the election in March 1996 and the

role of Commonwealth agencies during the initial policy development is examined. It is argued that the release of the first policy consultation paper for public comment, the process by which the two major public consultations took place and responses to those consultations are vital to oceans policy development.

Before analysing the process of policy development, this chapter explores why

Australia needs an oceans policy. In the years prior to and during the development
process, a number of academics questioned whether Australia needed, could cope
with and/or could maintain an oceans policy. This section, although it does not fit in
chronologically, is nonetheless as important as the development process as it
emphasises the difficulties in developing marine policies in Australia. It is argued by
McKinnon¹ and Herriman² that the complexities of Australia's federal system would
hinder the Commonwealth from implementing a comprehensive oceans policy.

Herriman claimed that due to the plethora of policies that deal with ocean and coasts
Australia actually had an oceans policy and did not require another policy document
to outline this.³ The lack of 'maritimeness' in the Australian culture and whether an
oceans policy will reinforce this, or act as a stimulant towards a maritime
consciousness, is also explored.

¹ McKinnon, K. "The Law of the Sea and Australian Ocean Policy", *Maritime Studies*, no.79, November – December 1994: 18-24.

² Herriman, M. "Public policy aspects of the development of national oceans policy?", *Maritime Studies*, no. 91, November-December 1996: 10-15.

³ Ibid.

2. Why an Oceans Policy?

The *Law of the Sea Convention* resulted in a comprehensive review of the global oceans regime and by ratifying it Australia agreed to establish a national, all-inclusive approach to ocean and marine resource management. Shortly after the Law of the Sea was open for signature in 1982, researchers began to question what effects would the implementation of the Convention's principles and measures have on Australia's ocean and marine resource policies. In 1986, seven years after Australia proclaimed its 200 mile fishing zone, Bergin argued that "there is a need for a comprehensive review of Australia's oceans programmes and policies." He also recognised that Australia lacked a national perspective and an inventory of current federal and state agencies dealing with ocean and marine management. ⁵

The ratification of the *Law of the Sea Convention* in 1994 stimulated discussions on maritime issues with a particular emphasis on the development of a national oceans policy. The Centre for Maritime Policy along with the Royal Australian Navy's Maritime Studies Program hosted a Maritime Policy Issues Workshop. This Workshop was based on a recommendation in the *Oceans of Wealth?* Report (see Chapter Three) that suggested that a national approach to managing the marine environment was essential and in the national interest. The proceedings of the Workshop addressed the strategic implications of a national oceans policy with

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⁴ Bergin, A. "Australia's Ocean Policy: the need for a comprehensive review", *Marine Policy* 10, no.2, 1986: 157.

⁵ Ibid.

⁶ Bateman, S. and Sherwood, D. eds., *Oceans Management Policy: The Strategic Dimension*, Monograph of the Maritime Issues Workshop held in Canberra in 1994, (Wollongong: University of Wollongong), 1995, 19.

relation to international, environmental and security aspects. The Commonwealth representatives, academics and industry officials speculated what was required of an oceans policy if it were to be implemented and developed in Australia. Ideas centred on multiple use management, marine conservation and coordination between the Commonwealth and states began to emerge as key objectives to the formation of such a policy.⁷ The emphasis of the Workshop was to gather consensus on the need for a marine policy.

Not all shared the enthusiasm that resulted from the Workshop and some authors questioned whether Australia could handle the development and implementation of an oceans policy. McKinnon argued that Australia was not organised and prepared enough to develop and fulfil the responsibilities outlined in the Law of the Sea. Moreover, he stated that "Australia, despite its strong marine scientific and marine industrial capabilities, lacks the political will to take a proactive and comprehensive approach to oceans policy." He claimed that due to the sectoral approaches and the federal division of responsibilities in marine resources management the development of an integrated, more comprehensive approach would be a difficult task. McKinnon did not deny that an oceans policy was needed in Australia, but emphasised the difficulties with establishing a policy of such magnitude. The

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⁷ Perri, M. "Towards a comprehensive oceans policy for Australia", *Oceans Management Policy: The Strategic Dimension*, Monograph of the Maritime Issues Workshop held in Canberra in 1994, (Wollongong: University of Wollongong), 1995, 19.

⁸ McKinnon, K. "The Law of the Sea and Australian Ocean Policy".

⁹ Ibid., 24.

¹⁰ Ibid., 21.

obvious obstacles to policy development included administrative complexities and the imposition of excessive financial burdens. He argued that

after all, it is well known that in the Federal Government any expressions of interest in another department's sphere of interest stirs up a hornet's nest and aggressive, defensive behaviour. In these times of budgetary restraint, protection of an agency's policy patch has been easier than usual because the focus has been restraint of cost, so new initiatives or better coordination could always be rejected on the grounds, real or spurious, of additional costs.¹¹

Nevertheless, McKinnon identified examples where Australia would receive long term savings and benefits if an oceans policy was developed. These included the availability of national long term data sets and uniform good management practices. McKinnon's views questioned the excitement of the idea of a national oceans policy that was gathering momentum in the maritime community. Arguably, his work pointed out that obvious ambiguities and concerns needed to be addressed if an oceans policy was to be successfully implemented in Australia. Whilst some of his comments may have been comprehended as blatant attacks on marine management practices, they did reinforce the notion that some change was required in order for improvement.

Herriman's views also challenged the development of an oceans policy 'document'.

He argued that Australia already had an oceans policy and this

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

¹¹ Ibid.

statements and activities of non-government organisations, and public statements by government officials. 12

Herriman argued that even though weaknesses were evident in the existing policies and sectoral management was fragmented, that did not constitute that Australia was without an oceans policy.¹³ He went on to say

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.¹⁴

Nevertheless, Herriman found difficultly in the "definitive" national oceans policy existing due to the intergovernmental arrangements that divide the marine and ocean jurisdictions across the Commonwealth, state and local levels. The existing oceans policy system had developed a culture that "recognises the importance of the environment in oceans management" and is in the process of developing further policies that give "substance to that culture." He concluded that the oceans policy area needs to be better understood before any actions are taken and that absence of a policy statement does not equate to the absence of a policy.

The lack of interest in ocean issues by average Australians also became evident during the Law of the Sea Conferences and since the ratification of the Convention.

¹⁴ Ibid., 11.

¹² Herriman, M. "Public policy aspects of the development of national oceans policy?", 10.

¹³ Ibid.

¹⁵ Ibid., 12.

¹⁶ Ibid.

¹⁷ Ibid., 14.

The absence of an oceans culture or 'popular consciousness', ¹⁸ is reflected by some writers as an issue that needs to be examined through the oceans policy process. ¹⁹ Historically, Australians have lived with the sea since the earliest period of indigenous habituation and following with European settlement. Nonetheless, the connections of the Australian people with maritime industries and issues have been minimal. For example, until recently the major maritime industries in Australia have been controlled by foreign investors. While Australia has been recognised as a 'sea dependent nation' through qualitative and quantitative analysis²⁰ the Australian people are not aware of their 'ownership' of maritime issues.

Appiah-Mensah argues that quantitative and qualitative analysis does not measure the popular consciousness of maritime affairs (or maritime culture).²¹ In addition, Bateman claims that Australians do not see themselves as maritime people despite the heavy use of the ocean and its resources recreationally.²² He goes on to say that

¹⁸ 'Popular consciousness' is how a society sees itself and how this is reflected in who the society is and how it is viewed by others. See Leary, P. "The 'Maritimeness' of Australia – but how maritime is Australia?", *Australian Defence Force Journal*, no.140, January/February 2000: 41.

¹⁹ See Bateman, S. "Australia's Oceans Policy and the maritime community", *Maritime Studies*, no. 108, September/October 1999; and Appiah-Mensah, S. "'Popular consciousness' of maritime Australia: some implications for a national oceans policy development", *Journal of the Australian Naval Institute*, July/September 1998: 26-34.

²⁰ See Hill, J. Maritime Strategy for Medium Powers, (Annapolis: Naval Institute Press), 1986.

²¹ Appiah-Mensah, S. "'Popular consciousness' of maritime Australia: some implications for a national oceans policy development", 26. Not all authors share this view. Leary argues that the Australian closeness to the beach; historical high dependence on the ocean for transport and trade; as well as strong involvement in the Law of the Sea Convention, all indicate the "maritimeness" of Australian popular culture. See Leary, P. "The 'Maritimeness' of Australia – but how maritime is Australia?", 41.

²² Bateman, S. "Australia's Oceans Policy and the maritime community".

"to most Australians the beach has become the neo-colonial fence beyond which nothing or very little is known."²³

Appiah-Mensah argues that the ocean and coastal policies and awareness programs of the past have prepared the public for a chance to comment, however, "maritime issues and the concept of national oceans policy are not understood by the public and...does not command priority in the public view." Both Appiah-Mensah and Bateman stress that *Australia's Oceans Policy* is an opportunity to increase public awareness and understanding of maritime issues beyond the 'beach knowledge' of Australia. Bateman states that

it could be said that the [oceans] policy represents the beginning of a new era of maritime awareness for Australia although the realisation of this goal will depend on the ongoing commitment of the federal government to community awareness activities.²⁵

Community participation in the oceans policy development process is a way of strengthening maritime awareness. Arguably, it is also a policy requirement preempting the possibility of policy failure. Theorists and policy makers are aware of the pitfalls of top-down policy making and that the lack of community participation in the policy development stage is often the cause of policy failure in the long term.²⁶

²³ Appiah-Mensah, S. "'Popular consciousness' of maritime Australia: some implications for a national oceans policy development", 31.

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²⁴ Ibid., 32.

²⁵ Bateman, S. "Australia's Oceans Policy and the maritime community", 13.

²⁶ See Sabatier, P. "Top-down and Bottom-up approaches to implementation research: a critical analysis and suggested synthesis", *Journal of Public Policy* 6, no.1, 1986. Sabatier argues that policy makers working from the top-down often are not fully aware of or misrepresent the preferences of street level bureaucrats and target groups. Also see Mazmanian, D. and

What is evident through studies of policy development, implementation and failure is that this consultation process must be a continual process throughout the life of the policy if community 'ownership' of the policy is to occur.²⁷ The oceans policy process, which is analysed at length in following discussions, demonstrates that community and stakeholder participation along with a 'whole of government' approach has been incorporated into policy development.

3. The Oceans Policy Process

The policy process was initiated on 8 December 1995 when Prime Minister Keating announced that the Commonwealth government had agreed to the development of an "integrated oceans strategy" that would deal with the management of Australia's marine resources. He stated that "the 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 EEZ while conserving the biological base of those resources." The Department of Prime Minister and Cabinet assumed responsibility for developing the policy, however, little progress achieved. The Government focused on the upcoming federal election and did not pursue the development of the oceans policy.

Sabatier, P. *Implementation and Public Policy*, (USA: Scott, Foresman and Company), 1983, 13.

²⁷ See Schneider, A. and Ingram, H. "Policy design: elements, premises, and strategies", in Nagel, S. ed., *Policy Theory and Evaluation: Concepts, Knowledge, Causes and Norms*, (USA: Greenwood Press), 1990, 85. Schneider and Ingram argue that community policy participation is an important element that needs to be incorporated into policy design.

²⁸ Keating, P. J. *Oceans Policy: Statement*, Press Release, the Prime Minister, the Hon P. J. Keating, No. 144/95, dated 8 December 1995.

²⁹ Ibid.

In their campaign for the Federal election, the Liberal Party used the development of an oceans policy as part of its environmental platform. John Howard announced that he would increase funding into environmental projects through the partial privatisation of the government owned telecommunications company, Telstra. The funds were then to be allocated to the Natural Heritage Trust. The Liberal Party announced that A\$50 million will be committed to the development and implementation of the Oceans Policy. Twenty million of this total was to come from the National Heritage Trust funds for new and ongoing programs. The other A\$30 million was to be allocated as new funding for the policy.³⁰

The Keating government was defeated in the federal elections on 2 March 1996 and the Howard government aimed at developing the oceans policy primarily with the intention of it being an "environmental protection policy." In his campaign speech, the now Prime Minister Howard had announced that the national oceans policy would cover the multiple use of resources; support regional cooperation; provide strategies to deal with illegal fishing; and support established ocean industries. The responsibility for oceans policy development was transferred to the Department of Environment, Sport and Territories (DEST - later the Department was renamed

³⁰ Liberal Party of Australia, *Environment Policy 1998 Federal Election*, Liberal Party of Australia: Canberra, 1998.

³¹ Bateman, S. *Marine Industry Development and Oceans Policy in Australia*, paper for COSU Conference, Singapore, 12-14 May 1997.

³² "National Oceans Policy: Prime Minister's Speech", *Maritime Studies*, no.92, January – February 1997.

Environment Australia).³³ During mid 1996, DEST established an intergovernmental committee to assist with the preparation of the policy which included members from major Commonwealth agencies involved in marine affairs.³⁴

The Biodiversity Group from DEST also worked with the committee in the process of establishing the first consultation paper. This process whereby DEST took the lead in developing the policy is described by Haward and Herr as "'grassroots' in orientation seeking the first instance to inform the Commonwealth more than to persuade the states."³⁵ A number of other committees were formed during these early stages of development to assist with the development of a discussion paper. Nevertheless, the developments during this time were restricted to the Commonwealth bureaucracy.³⁶ The Howard government placed the responsibility for the policy with the Minister for Environment, Senator Robert Hill, and the Minister for Resources and Energy, Peter McGauran.³⁷ Both Ministers were aware that policy development was not proceeding as quickly as first anticipated and refused to publicly comment on the progress of the policy in January 1997.³⁸

³³ Bateman, S. Marine Industry Development and Oceans Policy in Australia.

³⁴ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", *Ocean and Coastal Management* 43, 2000: 862.

³⁵ Haward, M. and Herr, R. Australia's Oceans Policy: Policy and Process, ACORN Phase 2 Workshop, Vancouver 10-11 December 2000.

³⁶ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 862.

³⁷ Collis, B. "Ocean awaits policy wake up call", *Canberra Times*, Saturday 18 January 1997.

³⁸ Ibid.

On 3 March 1997, Prime Minister Howard announced the development of Australia's Oceans Policy and launched a consultation paper titled *Australia's Oceans - New Horizons* for public comment. In his announcement, the Prime Minister highlighted that multiple use and ecologically sustainable development will be the two key principles that form the basis of the oceans policy. This was the first opportunity for public comment in the development process.

Commonwealth ministers decided on very specific instructions on what the policy will or will not do and this was reflected in the consultation paper. Firstly, the policy will establish a multiple use management framework and it will address the legislative, judicial and institutional arrangements that are concerned with oceans management and use. However, "it has been made clear that the Offshore Constitutional Settlement is not to be reopened, but that some changes to its administrative arrangements may need to be considered." Second, the policy will encompass existing sectoral policies and programs and it will focus on the identification and the promotion of economic opportunities from ESD based industries. This consultation paper also announced that a Marine Science and Technology Plan will be developed with the Oceans Policy and that consultation with community groups, state and territory governments is a priority. The Minister

³⁹ Sainsbury, K., Haward, M., Kriwoken, L., Tsamenyi, M., and Ward, T. Multiple use management in the Australian marine environment: principles, definitions and elements, Australia's Oceans Policy – Oceans Planning and Management, Issues Paper 1, A report commissioned by Environment Australia: Canberra, June 1997.

⁴⁰ O'Connell, C. "Developing Australia's Oceans Policy", *Outlook Conference*, ABARE, Canberra, 1998.

⁴¹ Ibid

⁴² Commonwealth of Australia, *Australia's Oceans, New Horizons, Oceans Policy Consultation Paper*, (Canberra: AGPS), 1997.

for Environment was given the responsibility for coordinating the whole oceans policy development process during the period of public comment while the Minister for Resources and Energy took responsibility for the development of the Marine Science and Technology Plan.

In order to stimulate responses to the consultation paper, the Commonwealth government requested that the Marine and Coastal Community Network (MCCN)⁴³ inform the community of the development of *Australia's Oceans Policy*. ⁴⁴ The MCCN developed a questionnaire to distribute along with the consultation paper. It can be argued that the questionnaire produced biased results as it was distributed to all 6900 MCCN members - including anyone else who wanted to fill one out. ⁴⁵ Despite this bias, some basis of the general community's perception of what should be included in an oceans policy was demonstrated through the results, although most respondents had an existing knowledge and interest in marine affairs. Over 8131 people were contacted by MCCN to answer the questionnaire and only 896 responded. ⁴⁶ Nevertheless, the three major issues that had arisen in the responses were water quality, fisheries management and marine protected areas. Other issues of concern were marine education, marine research, and according to Baker the least

⁴³ The Marine and Coastal Community Network is a NGO that is funded by the Australian government by way of a contract with the Australian Marine Conservation Society. See Tarte, D. "Community awareness, understanding and participation in Australia", *Maritime Studies*, no. 102, September- October 1998.

Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", *Ocean and Coastal Management* 43, 2000: 863.

⁴⁵ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 863.

⁴⁶ According to Wescott, 27 per cent of the responses were from industry related areas, 30 per cent from government agencies, 22 per cent from SCUBA diving groups and over 51 per cent had some affiliation with conservation groups. See Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 863.

important issues were defence, safety and sea level changes indicating a focus on current issues rather than future concerns by the respondents.⁴⁷

The public consultation period ended in April 1997 with a commitment to another round of public consultation scheduled later that year followed by the final policy paper by the end of 1997. The responses to the Consultation Paper were covered in depth in the third Background Paper that was prepared by the Portfolio Marine Group in Environment Australia (see later discussions). This Background Paper outlined the questions that were asked with the Consultation Paper, the number of questions answered from each sector and state, and key issues that were raised by the respondents.

Interestingly, 4000 copies of the consultation paper were distributed and only 63 written responses were returned.⁵⁰ Only a small number of submissions in response to the consultation paper were actually from the public while the majority were from academics and NGOs. Overall, the issues that most people responded to were the vision statement, marine biodiversity, ocean industries and employment. The least commented topics in the submissions were community participation and public awareness of maritime issues.⁵¹

⁴⁷ Baker, J. A Report of the Results of an Oceans Policy Survey, December 1996- April 1997, (Brisbane: MCCN), 1997.

⁴⁸ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 863.

⁴⁹ Portfolio Marine Group, Australia's Oceans Policy: Analysis of the Submissions to the Oceans Policy Consultation Paper, Background Paper 3, Environment Australia, October 1997.

⁵⁰ Ibid.

⁵¹ Ibid.

Environment Australia responded to the claims of bias in the MCCN questionnaire and recognised that community participation was too limited. It rectified this by organising several workshops and face to face interviews. The National Workshop convened by the Australian Committee for the World Conservation Union (ACIUCN) was held during 15 – 17 May 1997 to provide a broader community input on the development of the Oceans Policy. The 44 participants in the Workshop included academia, conservation groups, indigenous groups, MCCN and environmental agencies. The main recommendation from the Workshop was support for the Commonwealth and the continued and enhanced involvement of local and state governments in the development of the oceans policy. It also recommended the provision for NGO and indigenous community participation in the policy development and implementation and that an action plan is released with the oceans policy.

The key principles that were agreed upon in the workshop included intrinsic worth; indigenous peoples' interests; stewardship ethic; intergenerational and social equity; ecologically sustainable use; conservation of biological diversity; participatory, transparent and accountable decision making and management; and integrated

⁵² See ACIUCN, "Conserving Australia's oceans: development of an Oceans Policy for Australia," Outcomes of a national workshop convened by the Australian Committee for IUCN to provide input to the development of the Commonwealth Government's Oceans Policy 15-17 May 1997, ACIUCN Occasional Paper Number 7, March 1998.

⁵³ Ibid., 3.

⁵⁴ Ibid.

planning and management.⁵⁵ ACIUCN also came to an agreement and proposed new institutional and administrative arrangements that include a new Commonwealth agency and Bioregional⁵⁶ Authorities that would have intergovernmental functions.⁵⁷

The consultation process was viewed by many as an integral step in policy development despite the low response to the consultation paper. We cott argues

> experience in ocean policy development overseas suggests that if the public is not directly involved throughout the process, it will not feel any 'ownership' of the final policy. Without general community support for an integrated and comprehensive policy, there is serious risk that the most powerful of the sectoral interest groups, such as the mining lobby, will capture the policy and use it to promote a single developmental cause, not the long term conservation and management of the oceans.⁵⁸

The states reacted positively to the New Horizon's paper and were involved in discussions with the Commonwealth until July 1998. The following consultation paper claimed that "the States and Northern Territory have embraced this [New Horizon's] initiative and joined with the Commonwealth in the cooperative development of the Oceans Policy."⁵⁹ This "embracing" of the development of the oceans policy by the states and territories was overstated by the Commonwealth. The states and territories agreed that there was a need for a better base to care for,

⁵⁶ See Commonwealth of Australia, Interim Marine and Coastal Regionalisation for Australia: An Ecosystem-based Classification for Marine and Coastal Environments, Version 3.2, IMCRA Technical Group, Canberra, November 1997.

⁵⁷ ACIUCN, "Conserving Australia's oceans: development of an Oceans Policy for Australia," 11.

⁵⁸ Wescott, G. "Caring for oceans: the new frontier", *Habitat Australia* 25, no.2, April 1997, 30.

⁵⁹ Commonwealth of Australia, "Australia's Oceans Policy Background", Australia's Oceans Policy – An Issues Paper, (Canberra : AGPS), May 1998, available in html format at http://www.oceans.gov.au.

use and understanding of Australia's marine resources and that the "oceans are too vulnerable to the tyranny of small decisions."60 Additionally, the states' and territories were concerned with the oceans policy's institutional arrangements, financial commitments and obligations. The Commonwealth assured the states that in accordance to the Offshore Constitutional Settlement, the development of a Commonwealth agency for ocean management would not override state and territory jurisdiction.

The Australian Conservation Foundation (ACF) reacted positively to the release of the document for public comment. Their specific queries during this stage of policy development were in regard to the application of the multiple use approach in ocean management. The ACF was concerned that the multiple use strategy that would be used in oceans policy would be similar to that used in forestry management. They argued that

> the multiple use of Australia's native forests has meant that they have been overwhelmed by woodchipping, logging, mining exploration and other resource uses, and compromised by the reluctance of the national government to override 'states rights'. It would be a tragedy if such forest policy failings were repeated by the development of an oceans policy dominated by resource extraction and industrial interests lacking Commonwealth leadership over the states.⁶¹

⁶⁰ Ibid.

⁶¹ Horstman, M. "Oceans: big blue looming?", *Habitat Australia* 25, no.3, June 1997: 12.

The ACF added that marine protected areas should be the used to conserve the marine environment. This view was also reflected in additional submissions in responses to the Consultation Paper.⁶²

4. Marine Science and Technology

Whilst the oceans policy development was progressing, government agencies dealing with marine science and technology and the Marine Science and Technology

Working Group were working to develop the *Australia's Marine Science and Technology Plan.* The government aimed to develop and release the Plan as a companion to *Australia's Oceans Policy*. ⁶³ Nevertheless, there are a number of conferences and reports that led to the development of the new marine science and technology initiative. First, the Ocean Outlook Conference was held in November 1994 which resulted in the development of *A Blueprint for the Oceans Report*. This Report addressed the sectoral issues from a marine science perspective, technological advances as well as recommendations. It argued that

government, science, industry and conservation interests must aim for an agreed approach to the use and protection of the resources of the marine environment. It must also be realised that the enormous size and potential of Australia's marine territory will quickly absorb existing human and technological resources.⁶⁴

⁶² Portfolio Marine Group, Australia's Oceans Policy: Analysis of the Submissions to the Oceans Policy Consultation Paper.

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⁶³ Commonwealth of Australia, Australia's Marine Science and Technology Plan, (Canberra: AGPS), June 1999.

⁶⁴ Steering Committee, A Blueprint for the Oceans, Ocean Outlook Conference, 16-17 November 1994, 6.

The main recommendation in this Report was that a national marine science policy and research strategy be developed so that scientific and administrative coordination of Australia's ocean territories be improved.⁶⁵

The second factor that led to the development of the Plan was the *Marine Industry Development Strategy* which was developed by the Marine Industries and Science Council and released by the Department of Industry, Science and Tourism and in July 1997. During this time, the development of a Marine Science and Technology Plan was also announced by the Department. The Strategy highlighted what the Marine Industry is worth and what should incur for further resourceful developments. It illustrated that 90 per cent of Australia's oil and gas is sourced offshore; that the shipbuilding industry supplies one third of the world's high speed ferry market; wild capture fisheries represent a major primary industry; and that marine tourism is a booming industry.⁶⁶

During March 1998, the CSIRO Division of Marine Research released a paper on integrated regional ecosystem based management to Environment Australia.⁶⁷ This report outlines the principal issues with management practices at the time and reasons for an integrated and ecosystems based approach to ocean management. Whilst this Report addresses many of the issues raised by the Background and Issues Papers (see following discussions) it is significant because it echoes what issues were

⁶⁵ Ibid., 18.

⁶⁶ Bateman, S. "Australia's Oceans Policy and the maritime community".

⁶⁷ CSIRO Division of Marine Research, Integrated Regional Ecosystem-Based Management in Australia's Oceans Planning and Management, A Report to Environment Australia, 27 March 1998.

being raised at the interdepartmental level. These issues include working on biodiversity issues through a "whole-of-ocean management system" ⁶⁸, and how each sector can address inter and intra sectoral issues.⁶⁹ Notably, it also suggests that the key method for dealing successfully with the current sectoral problems is through regional management plans that would "provide a more stable basis for sector operations and biodiversity conservation than the present sectoral management process."⁷⁰ The Report also provides maps of the large marine regions of Australia's EEZ which have since been used extensively by Environment Australia and the National Oceans Office.

Over one hundred and forty submissions were received in response to the Scoping Paper for the Plan which was released in April 1997 and the Draft for Consultation that was released in June 1998. The submissions and the consultation process that lasted two years contributed to the content of Australia's Marine Science and Technology Plan (see details in Chapter Six).⁷¹

5. Issues and Background Papers

Environment Australia commissioned a series of Issues and Background Papers to instigate debate on oceans policy in the community and government agencies.⁷² In

⁶⁸ Ibid., 4.

⁶⁹ Ibid., 6.

⁷¹ The Marine Science and Technology Working Group, Australia's Marine Science and Technology

⁷² Haward, M. and Herr, R. Australia's Oceans Policy: Policy and Process.

addition, they provided the institutional support and organised workshops, forums and meetings with specific community groups. The first three Issues Papers examine the oceans planning and management aspect of the development and implementation of the oceans policy. Each Issues Paper makes clear that Australia is responsible for 16 million square kilometres of ocean which includes 11 million square kilometres of EEZ.

The first Issues Paper was released in June 1997 and it covers the definitions, principles and measures that relate to multiple use management in the Australian marine environment. Three of the authors of the Issue Paper were academics and the remaining two were researchers at CSIRO. The authors identify that multiple use management is underlined by four major principles. These include ecosystem integrity; wealth generation and resource use; equity; and participatory decision making. The Issues Paper outlines the main principles and definitions and then identifies the main elements that make up a multiple use management framework. An appropriate legislative framework and an appropriate operational framework that consists of 1) a consultative mechanism 2) explicit management strategies and plans 3) evaluation and assessment 4) implementation capability and process; are identified as the main elements.

⁷³ Sainsbury, K., Haward, M., Kriwoken, L., Tsamenyi, M. and Ward, T., Australia's Oceans Policy: Oceans Planning and Management, Multiple Use Management in the Australian Marine Environment: Principles, Definitions and Elements.

⁷⁴ Ibid.

⁷⁵ Ibid. 4.

⁷⁶ Ibid., 18.

The Issues Paper outlines that the legislative framework includes international obligations, Commonwealth legislation and intergovernmental agreements with the states and Territories. The authors argue that this framework is therefore "overly complex and cumbersome" and "does not adequately address multiple use management". The intergovernmental arrangements and agreements that directly impact ocean management include the Offshore Constitutional Settlement (OCS) and the Intergovernmental Agreement on the Environment (IGAE), and they are briefly discussed in the Issues Paper. It goes on to describe some approaches to multiple use management and the key issues for the Commonwealth. The Paper stresses that multiple use frameworks need to be applied regionally to work effectively. These regions need to be identified when the multiple use management is put into practice and scientifically supported operating and performance measures need to be developed. Additionally the responsibilities and actions within and between management regions need to be coordinated if the multiple use framework is to work successfully. The second of the multiple use framework is to work successfully.

The second Issues Paper and the third Issues Paper were released in September 1997.

The second paper outlines the incentive instruments for marine management and uses. The paper defines terms 'incentive instruments' to loosely mean economic, legal and regulatory instruments as well as education, voluntary approaches,

⁷⁷ Ibid., 19.

⁷⁸ Ibid., 4.

⁷⁹ Greiner, R., Young, M., McDonald, A. and Brooks, M., *Australia's Oceans Policy: Oceans Planning and Management, Management Instruments for Marine Allocation and Use, Issues Paper 2*, A Report Commissioned by the Commonwealth Department of Primary Industries and Energy, September 1997.

community based instruments and research.⁸⁰ A set of criteria and principles are established to measure and evaluate individual management instruments. This Issues Paper also suggests alternatives to the institutional framework "which may be better suited to managing the ocean-land interface and the multiple uses of the oceans in a sustainable manner."⁸¹

The first chapter of the second Issues Paper explains the economic wealth that underlines the use of marine resources. It is estimated that the major marine industries engage in A\$30 billion in economic activities annually.⁸²

In order of their importance: marine tourism and recreation contribute 50 per cent; oil, gas and engineering contribute 27 per cent; shipping, transport and ship building 13 per cent; and commercial fishing and aquaculture 5 percent.⁸³

Given these statistics, the authors of the Paper argue that "economic sustainability relies on ecological integrity of the oceans." The following chapters deal with opportunities for employing incentive instruments within a policy framework for oceans use and management, and alternative administrative arrangements. The suggested administrative options reflect those that have been uncovered in previous consultation papers.

⁸⁰ Ibid.

⁸¹ Ibid., 5.

⁸² Greiner, R., Young, M., McDonald, A. and Brooks, M., "Introduction", *Australia's Oceans Policy: Oceans Planning and Management*, 6.

⁸³ Ibid.

⁸⁴ Ibid.

The third Issues Paper was commissioned by the Department of Primary Industries and Energy, rather than Environment Australia, and examines existing arrangements for marine use planning, the models that are currently in use and their evaluation.

Use of potential models is also explored as well as potential Commonwealth roles. This Paper identifies that there are a number of marine use planning regimes already in place such as individual state coastal policies and the *Great Barrier Reef Marine Park Act*. It finds that

current approaches and mechanisms tend to have come about as coping responses to specific issues while some of these approaches and mechanisms are effective and efficient, they have not evolved from any overall systematic framework...intergovernmental agreements and memoranda of understanding are providing a useful basis for resource allocation decision-making where more than one sphere of government is involved...direct stakeholder involvement and partnership approaches are becoming more important in the resolution of cross-sectoral resource allocation issues...⁸⁶

Many international instruments are explored in this Paper through the framework of marine use planning. The second Background Paper examines all international instruments in specific detail and their impact on *Australia's Oceans Policy*.

During October 1997 the fourth, fifth and sixth Issues Papers were released along with a Summary version of the first three Papers. The fourth, fifth and sixth Papers all examine the socio-cultural aspects for the development and implementation of the oceans policy. The fourth Issues paper delivers the socio economic perspective by examining the other available forms of management not explored by previous Issues

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⁸⁵ Pitts, D. Australia's Oceans Policy: Oceans Planning and Management, Best Practice Mechanisms for Marine Use Planning, Issues Paper 3, A Report Commissioned by the Commonwealth Department of Primary Industries and Energy, September 1997.

⁸⁶ Ibid., 31.

Papers such as open access, privatisation, community based management and integrated stewardship.⁸⁷ The Paper identifies that a quarter of Australia's population lives within three kilometres of the beach and that many aspects of Australian culture including lifestyle and social values are based in or around the marine environment.⁸⁸ It argues, however, that in the majority of cases the growing commitment to public participation in environmental planning is revealed after matters have come to dispute.⁸⁹

The second chapter of the fourth Issues Paper outlines Hardin's paper on the 'Tragedy of the Commons'. 90 Hardin considers open access to a commons and or private ownership as solutions to the 'tragedy' that can occur to a commons. The authors of the Issue Paper argue that Hardin does not consider the self managing communities who can limit open access and create sustainable resource regimes.

These communities

develop social rules and norms regarding resource use, as well as sanctions for those who do not comply with these informal rules. Community values often reflect moderation and prudence rather than excessiveness and recklessness. Communities are social entities which amount to more than the sum of their individual parts. For example, a community of fishermen is more than a collection of individuals with boats

⁸⁷ Brown, V. and Spink, M. "Management Options", Australia's Oceans Policy: Socio-Cultural Considerations, Caring for the Commons Socio-cultural Considerations in Oceans Policy Development and Implementation, Issues Paper 4, A Report Commissioned by Environment Australia, October 1997.

⁸⁸ Brown, V. and Spink, M. "The oceans as a common pool of resources", Australia's Oceans Policy: Socio-Cultural Considerations, Caring for the Commons Socio-cultural Considerations in Oceans Policy Development and Implementation.

⁸⁹ Ibid.

⁹⁰ See Hardin, G. 'The tragedy of the commons', Science 162, 1969: 1243-8.

and nets, it is also a social system with recognisable attributes.⁹¹

This Issue Paper concludes that the linkages between different interests in policy development demonstrate that there is potential for the formation of an oceans based policy community. 92

The fifth Issues Paper investigates the main issues in management and conservation of marine and coastal resources in Australia, who the stakeholders are and their roles and examples of collaborative management. This Issues Paper identifies the different types of stakeholders in the marine and coastal community. They include government agencies; direct and indirect users of the marine resources and marine environment; suppliers and marketers of goods and services of the users of marine resources; end users of marine products; community groups and NGOs; local residents and the general community. The Paper argues that the oceans policy makers need to consider collaborative management, stakeholder input and stewardship ethic in the policy design, development and implementation.

The sixth Issue Paper and the last in the collection on socio-cultural perspectives, examines the past and contemporary indigenous relationships with oceans and

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⁹¹ Brown, V. and Spink, M. "Managing the commons", Australia's Oceans Policy: Socio-Cultural Considerations, Caring for the Commons Socio-cultural Considerations in Oceans Policy Development and Implementation, 7.

⁹² Ibid., 29.

⁹³ Claridge, G. and Claridge, C. Australia's Oceans Policy: Socio-Cultural Considerations, Expanding the Role of Collaborative Management and Stewardship in the Conservation Management of Australia's Marine and Coastal Resources, Issues Paper 5, A Report Commissioned by Environment Australia, October 1997.

⁹⁴ Claridge, G. and Claridge, C. "Marine and coastal stakeholders", Australia's Oceans Policy: Socio-Cultural Considerations, Expanding the Role of Collaborative Management and Stewardship in the Conservation Management of Australia's Marine and Coastal Resources.

marine resources. ⁹⁵ Similarly to the fifth Issues Paper, it concludes that stewardship ethic is an important element that must be considered in management principles. The stewardship ethic is also an inherent feature of the Aboriginal and Torres Strait Islander culture and "can provide the basis for reconciling Indigenous and non-Indigenous perspectives on ocean management to the benefit of all Australians". ⁹⁶

During October 1997, the first, second third and fourth Background Papers were released. In support of the Issues and Background Papers, a Senate report completed in the same month stated that, "the need for an oceans policy has been widely accepted." The first Background Paper examines ocean facts and figures including seabed maps, descriptions of ocean resources and maritime industries. It emphasises that there is a critical need for more information on marine resources from the basic state of fish stocks to mining the seabed. In particular it emphasises the impacts of maritime tourism and recreation on the Australian economy as well as on the environment. Some of the facts and figures per one year include that international tourism accounts for over three million tourists that head to the coast; recreational fishing is a A\$3 billion industry; 80,000 people are members of sailing

⁹⁵ Smyth, D. Australia's Oceans Policy: Socio-Cultural Considerations, Saltwater Country Aboriginal and Torres Strait Islander Interest in Ocean Policy Development and Implementation, Issues Paper 6, A Report Commissioned by Environment Australia, October 1997.

⁹⁶ Smyth, D. "Executive Summary", Australia's Oceans Policy: Socio-Cultural Considerations, Saltwater Country Aboriginal and Torres Strait Islander Interest in Ocean Policy Development and Implementation, 2.

⁹⁷ Senate Environment, Recreation, Communications and the Arts Reference Committee, *Inquiry on Marine Pollution*, (Canberra: Senate Printing Unit, Parliament House), 1997, 81.

Oceans Policy: Oceans Facts and Figures, A Primer on Australia's Oceans and Exclusive Economic Zone, Background Paper 1, A Report Commissioned by Environment Australia, October 1997, available as html at http://www.oceans.gov.au.

clubs; and the 'beach fashion' industry makes in access of A\$1 billion. 99 The Paper argues

> the real costs of degradation due to major changes to or loss of the natural environment, pollution and depletion of resources are rarely taken into account. Traditional accounting methods also fail to recognise the 'non use' values that society has increasingly begun to place upon environments in their natural state, as support systems for the 'web of life' and as places to be enjoyed simply for their natural beauty. 100

The second Background Paper is a comprehensive summary of international instruments that are relevant to Australian ocean and marine resource issues. The focus of these summaries is to articulate what are the objectives and/or aims of the international instrument in question; what are its main principles and measures; and what are the implications of these principles for Australian oceans policy. ¹⁰¹ The first part of this Background Paper reviews the international instruments that Australia has obligations to in the subsections 'Antarctic'; 'communications'; 'cultural Heritage'; 'customs, maritime crime and enforcement'; 'exploration and exploitation of non living resources'; 'fishing'; 'framework instruments'; 'maritime transport'; 'maritime safety and salvage'; 'marine scientific research'; 'military'; 'preservation and protection of the environment'; 'maritime boundaries and joint development areas'; and 'miscellaneous instruments of less-immediate relevance'.

The authors of the Paper argue that

99 Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Herriman, M., Tsamenyi, M., Ramli, J. and Bateman, S. Australia's Oceans Policy: International Agreements, available as html at http://www.oceans.gov.au.

an interesting, and vitally important, observation that can be made simply by looking through the contents list of this report, is that a good many policy-defining international instruments have only come into force within the last ten years or so. This explosion of international regulation of marine affairs shows no sign of slowing. Therefore, Australia's oceans policy will need to recognise the dynamic nature of the international framework within which it must operate and provide for continual, systematic and controlled evolution. ¹⁰²

The second part of this Paper reviews selected oceans policies from near nation states, selected East Asian states and other countries of interest that include Canada and the Netherlands. Whilst *Australia's Oceans Policy* is the first national policy of its kind, this Paper emphasises the necessity to observe other nation's methods of managing their ocean and marine resources before an approach is decided.

The Paper divides the countries into three categories based on their approaches to ocean and marine management. The first category is the 'sectoral approach' where Japan and Malaysia are examined. Second, the 'coordination approach' to ocean management used by the Netherlands and China is also explored. They "attempt to foster cross-sectoral awareness and provide for multiple-use of marine and coastal areas while recognising the continued autonomy of the various policy sectors." The third category is the 'centralisation approach' where central institutions are created to administer ocean affairs. The authors suggest that Korea, and to a lesser extent, Canada are most suited in this category. It is noted that

the general conclusion of this report is that, while the LOSC [Law of the Sea Convention] serves as a defining cornerstone for much of the current interest in oceans policy, both in

103 Ibid.

Herriman, M., Tsamenyi, M., Ramli, J. and Bateman, S. "Executive Summary", Australia's Oceans Policy: International Agreements, available as html at http://www.oceans.gov.au.

Australia and elsewhere, the mix of other international instruments plays no less a role in defining the parameters within which an oceans policy must operate. 104

The fourth Background Paper is an analysis of marine and coastal reviews in Australia and what their recommendations are for establishing an oceans policy¹⁰⁵ (see earlier discussions). The Paper reviews 34 recent (1989-1997) national inquiries and reports that deal with aspects of the Australian marine and coastal environment. The authors observe that although the inquiries and reports do not specifically address the content of an oceans policy, there are recurring themes throughout that include inter alia "a coordinated and integrated approach to planning"; "ecosystems approach to planning and management"; and "maintenance of water quality". 106

The recommendations from past reports are categorised into management; scientific and research; fisheries and aquaculture; ecology/biology/diversity; marine industries and planning. 107 The Paper reinforces the argument that many of these reports were overlapping in terms of reference, findings and recommendations. It, in simple terms, takes the complexities of past reviews places their recommendations in a comprehensive summary.

¹⁰⁴ Ibid.

¹⁰⁵ Zann, L. and Earley, O. Australia's Oceans Policy: Reviews and Recommendations, Analysis of Marine and Coastal Reviews and their Recommendations in relation to Development of an Oceans Policy for Australia, Background Paper 4, A Report Commissioned by Environment Australia, October 1997.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

The seventh Issues Paper was released in November 1997 after all the other Issues and Background papers were circulated. This paper differs from the others as it specifically focuses on biodiversity conservation. It gives an overview of existing government measures and suggests how to achieve effective national conservation of marine biological diversity. It argues that by "applying the principles of Integrated Regional Management through a national Oceans Policy will give Australia its best chance to take positive steps towards the sustainable, long-term management of our marine environment." It concludes with the following recommendations for the oceans policy

- To improve the knowledge on biodiversity
- Establish an integrated management process for our marine jurisdiction and each region
- Improve our national capacity to manage the oceans
- Reduce the impacts of sector activities
- Monitor and report on the condition of the biodiversity
- Improve the community's stewardship and participation and;
- Facilitate the participation of indigenous peoples. 110

This Issues Paper offers an adequate conclusion for the points raised and recommendations given in all the Issues and Background Papers. It also reinstates

Ward, T., Alder, J., Margules, C., Sainsbury, K., Tarte, D. and Zann, L. Australia's Oceans Policy: Biodiversity Conservation, Issues Paper 7, A Report Commissioned by Environment Australia, November 1997.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

the importance of biological diversity in addition to management practices and socioeconomic issues.

After the publication of the Issues and Background Papers a public forum reviewed the draft policy paper in December 1997. One hundred and thirty three delegates took part in the forum and represented a cross section of stakeholders, interest groups and individuals. Despite this attempt at diversity, the forum was dominated by Commonwealth and state bureaucrats. During the opening Keynote Address, Senator Robert Hill announced that the stakeholders will partake in discussions right up until the completion of the policy in mid 1998. He also reinforced the notion that the oceans policy is to be a "whole of government approach" and that it applies nationally. Hill went on to say,

the scope of management arrangements for our oceans cannot be limited by arbitrary jurisdictional boundaries. While you may be able to draw a line in the sand, it would be foolish to try and do so in the sea. Unless, therefore, the policy is a federal arrangement – straddling the three nautical mile demarcation – we will be perpetuating a policy and management boundary which does not reflect the nature of the resources we are seeking to manage. 114

Hill emphasised that the integration across state and Commonwealth boundaries did not mean that the Offshore Constitutional Settlement would be reopened. The ESD

¹¹¹ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 865.

¹¹² Hill, R. Speech by Senator the Hon. Robert Hill presented to the Environment Australia Oceans Policy Forum, Parliament House, Canberra, 2 December 1997.

¹¹³ Ibid.

¹¹⁴ Ibid.

principle was announced as the most important in the management of oceans and that the oceans policy would be applied through a multiple use framework.

6. The MAGOP Report and the "Draft" Policy Document

The Minister for Environment and Heritage established the Ministerial Advisory
Group on Oceans Policy composed of people from NGOs in September 1997. It
consisted of 18 members that represent "key interest groups, academic and research
institutions, Aboriginal and Torres Strait Islanders, the Australian Marine
Conservation Society and two members from EA. Significantly this group did not
include any formal representation from the states." MAGOP was chaired by
David Connolly a former shadow Minister for the Environment. Its role was to
provide advice to the Minister on the views of the broad range of stakeholders of the
policy and any other issues the Group thought relevant to the development of the
policy. It is also suggested that MAGOP was established to gain the support of
NGOs during the oceans policy process as well as to promote public awareness. 116

MAGOP fulfilled its role when it reported to the Minister in early March 1998.¹¹⁷

This report was released publicly in May 1998 along with *Australia's Oceans Policy*- *An Issues Paper* which was known as the draft policy document. The MAGOP

Report outlines close to one hundred recommendations for the development and

115 Haward, M. and Herr, R. "Australia's Oceans Policy: Policy and Process".

¹¹⁶ Interview with member of MAGOP, Tuesday 6 July 1999.

Ministerial Advisory Group on Oceans Policy, Australia's Oceans Policy: A Report of the Ministerial Advisory Group on Oceans Policy, (Environment Australia, Canberra: AGPS), March 1998.

implementation of the oceans policy. MAGOP identify that the core objectives of that need to be incorporated into the oceans policy include ESD and multiple use principles, and integrated regional ocean management and planning. 118 Interestingly. MAGOP admit very early in their report that the group did not reach unanimity on whether or not new institutional arrangements were required for the implementation of the Oceans Policy. MAGOP claims

> one view was that current institutional, planning and management arrangements are flexible enough to enable increased communication, coordination and consultation through these arrangements. A second view was that the current arrangements are fragmented and lack a strategic focus and integrated approach to the conservation of the ocean's biological diversity. 119

The Report examines which management principles should be considered in the oceans policy along with ESD principles. The three that are identified are ecosystem based management, multiple use and integrated regional ocean planning and management. 120 Ecosystem based management is described as a management that

> seeks to integrate scientific knowledge of ecological processes with economic, environmental, social, cultural and other factors. The aim is to manage human activities as to ensure continuing marine ecosystem health. 121

The majority of MAGOP have claimed that they support this approach. Multiple use management, on the other hand, is supported by the whole Advisory Group. This management approach integrates different uses of a resource or environment "to

¹¹⁸ Ibid., vi.

¹¹⁹ Ibid.

¹²⁰ Ibid., 4.

¹²¹ Ibid.

reach an acceptable balance of outcomes across the full range of uses." The implementation of the multiple use approach will use a cross sectoral and regional approach "recognising possibilities for sequential as well as coincidental use, and allowing restricted or sole use through spatial reserves and zoning." ¹²³

The four major principles of multiple use include maintenance of ecosystem integrity; wealth generation and resource use; equity of access to resource use and a participatory framework for decision making. 124 Integrated regional ocean management and planning is based on improvements to the current sectoral management with a "commitment to the regional conservation of biological diversity." ¹²⁵ MAGOP did not have a unanimous approach to this form of regional management with the greatest concerns being in its implementation. 126 Nevertheless, the Report highlights the Great Barrier Reef Marine Park Authority as an example of success in regional management. 127

Although the attributes of potential new institutional arrangements were examined, MAGOP again did not come to an agreement on whether they should remain sector specific or responsible for cross sectoral arrangements. Nevertheless, they proposed

¹²² Ibid., 5.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ The concerns with implementation include the addition of another layer of management and administrative loads, problems with bioregional plans where they cross jurisdictional boundaries; and "lack of clarity regarding the definitions of the words 'regional' and 'integrated' and therefore the lack of certainty about the implications of adopting integrated regional management." See Ministerial Advisory Group on Oceans Policy, Australia's Oceans Policy: A Report of the Ministerial Advisory Group on Oceans Policy, 5.

¹²⁷ Ibid., 7.

several alternative models for the new institutional arrangements that would coordinate activities on the national level and the regional levels. It is suggested that similar regional level arrangements are to be incorporated into the oceans policy design. The first model consists of a Ministerial Council, Secretariat, Working Committees, a Reference Group and Regional Coordinating Boards. This model was designed to acknowledge the division of powers exercised by the Commonwealth and the states, as well as involving the regional authorities and NGOs in the development and implementation of the oceans policy. 129

The second model consists of the Ministerial Council, a National Oceans

Commission and Regional Boards. It was designed to integrate all jurisdictions into one council reinforcing the 'whole of government' approach. The example used to demonstrate the effectiveness of this model is the Murray-Darling Basin

Commission. 131

The third model is based on the Victoria Coastal Council and includes a Ministerial Council, Coordinating Council, Secretariat and Regional Coordinating Boards. ¹³²

The rationale behind this model is that the Coordinating Council provides policy

¹²⁸ Ibid., 11.

¹²⁹ Ibid.

¹³⁰ Ibid., 12.

¹³¹ Ibid., 13.

¹³² Ibid., 14.

direction and planning and the Secretariat processes that information and passes it to various agencies. ¹³³

The Report includes other recommendations relating to

- conservation of marine biological diversity;
- land sourced pollution;
- fisheries;
- shipping;
- petroleum and minerals;
- tourism;
- Aboriginal and Torres Strait Islander peoples' responsibilities and interests;
- Skills development, community participation, marine scientific research, information and education; and
- Surveillance and enforcement. 134

The second document that was released for public comment on 26 May 1998 along with the MAGOP Report was *Australia's Ocean Policy - An Issues Paper*. The Issues Paper deliberately makes clear that

it has been prepared by a working group of officials in consultation with all Australian States, the Northern Territory and the Australian Local Government Association (ALGA). It does not present a formal position or outcomes agreed by the

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¹³³ Ibid.

¹³⁴ Ibid., xiii.

¹³⁵ Commonwealth of Australia, Australia's Oceans Policy – An Issues Paper, (Canberra: AGPS), May 1998.

Commonwealth Government, State and Territory Governments or their agencies or ALGA. 136

It also emphasises that "the document contains no commitments to new funding, as budgetary implications will be considered by the Commonwealth in the context of the final oceans policy."¹³⁷ The Issues Paper does not hide that 1998 has been named International Year of the Oceans and that the release of the oceans policy should be released as part of Australia's activities that recognise the significance of its oceans.

The Issues Paper begins with a discussion on 'why Australia needs an Oceans Policy' and 'what will *Australia's Oceans Policy* do?' In this section it identifies some of existing state initiatives that the Oceans Policy will support and build upon. These include the *Victorian Coastal Strategy*; the Western Australian *New Horizons in Marine Management* strategy; the *South Australian Marine and Estuarine*Strategy; the New South Wales Coastal Policy and the Tasmanian Coastal Policy. 138

The Paper further explains the ocean boundaries, international obligations and indigenous interests. It acknowledges Australia's responsibilities to the *United Nations Convention of the Law of the Sea* to provide scientific data on the outer limits of the continental shelf to the Commission on the Limits of the Continental Shelf by 2004.

¹³⁶ Ibid., 1.

¹³⁷ Commonwealth of Australia, "Foreword", *Australia's Oceans Policy – An Issues Paper*, available as html at http://www.oceans.gov.au

¹³⁸ Commonwealth of Australia, "Australia's Oceans Policy Background", *Australia's Oceans Policy*— *An Issues Paper*, available as html at http://www.oceans.gov.au

The second major part of the Paper describes the ESD principles that the policy will be based on, integrated oceans planning and management arrangements and what the options are for such integrated planning. Included in the 'policy guidance' section, a provision for public and community participation states

Effective public participation in oceans management requires that:

- the public should have access to sufficient information about current oceans resource uses, proposals and alternative uses and their impacts; and
- the public should have sufficient opportunities for informed community contributions to decisions and management; and
- there is a clear understanding of the responsibilities of governments for planning and management in meeting community and national interests. 139

The Issues Paper, whilst acknowledging the importance of public and community participation, also makes clear that "It must always be remembered, however, that governments have the ultimate responsibility for managing the oceans on behalf of all Australians." ¹⁴⁰

Following this, the Issues Paper examines the formulation of *Australia's Marine*Science and Technology Plan and the importance of the Marine Industry

Development Strategy which is already in place. During the time of release of the Issues Paper, a draft Plan was under development by the Marine Science and

Technology Plan Working Group. Many of the proposals for the framework of the

Commonwealth of Australia, "Principles for Ecologically Sustainable use", *Australia's Oceans Policy – An Issues Paper*, available as html at http://www.oceans.gov.au.

¹⁴⁰ Ibid.

plan include provisions for the technical and scientific infrastructure to enable better marine data collection, and to complete the mapping and data collection of the sea floor in the EEZ and continental shelf areas.¹⁴¹

The fifth chapter observes the principle actions which include the subsections 'ocean uses and impacts'; 'training and development'; 'understanding the oceans'; 'protecting the national interests' and 'assessing effectiveness'. ¹⁴² This chapter alone covers almost two thirds of the entire Issues Paper and each subsection is "designed to cover development and implementation of *Australia's Oceans Policy*." ¹⁴³ Each subsection describes actions that were already in place, some that at the time were under consideration and those that may be under consideration for *Australia's Oceans Policy*.

Both the Issues Paper and the MAGOP Report covered the options for new institutional models to govern the development and implementation of the oceans policy. In both documents the Commonwealth emphasised that the states and territory governments will retain their jurisdictions and responsibilities in accordance to the OCS. All options for new institutional bodies would work within the existing jurisdictional framework and focus on cross sectoral and cross jurisdictional issues. The option for regional bodies was also discussed for assessment and planning. Wescott also notes that

Commonwealth of Australia, "Marine industry, science and technology", *Australia's Oceans Policy – An Issues Paper*, available as html at http://www.oceans.gov.au.

¹⁴² Ibid

¹⁴³ Commonwealth of Australia, "Principle actions", Australia's Oceans Policy – An Issues Paper, 36.

the MAGOP report and the "Issues Paper" were a fascinating contrast between a report produced under the restraints of a public service and a report produced by an independent collection of non-government organisation representatives, uninhibited by government structure. 144

The Issues Paper was designed for the specific purpose of achieving public comment.

National newspapers printed requests for public comment on the Issues Paper.

During this process, Environment Australia organised public forums where the public could get an overview of the Issues Paper and to provide comment. The forums consisted of two parts, the first part included a formal briefing from Environment Australia officials while the second component was an information session organised by the state branches of the MCCN.

During the public consultation period, the MCCN prepared and distributed a questionnaire on the Issues Paper. When the consultation period ended on 15 July 1998, 502 submissions in response to the Issues Paper and questionnaires had been returned. This time a vast majority of the responses came from individuals rather than conservation groups as they did in the first round of public consultation. One observer found that the period of public consultation after the release of the Issues paper to be non-sufficient. Appiah-Mensah observed that "even the government"

¹⁴⁴ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 865.

¹⁴⁵ Bergin, A. and Haward, M. "Current legal developments: Australia", *The International Journal of Marine and Coastal Law* 14, no.3, 1999: 393.

agencies have gone dumb on it [the consultation process] and the media does not appear to be bothered at all."146

7. NGO Responses to the Issues Paper

Environmental groups in particular pushed the argument that there is a need for biodiversity conservation and the stringent application of Marine Protected Areas. One such advocate wrote at the time

> the size and shape of these marine protected areas should reflect the ecosystem needs and not the desires of the industry. Around these areas, multiple use management that is sensitive to ecosystem capacity forms the framework for extractive uses and human activity. In order to achieve these goals some institutional and management changes are necessary. A coordinating and monitoring body separate from the plethora of existing resource development and extraction agencies is needed to ensure commercial gain is balanced by marine biodiversity conservation.¹⁴⁷

Prideaux goes on to say that people need to take advantage of the opportunity to tell the Commonwealth that "Australia wants an oceans policy for the new millennium, not a reflection of the past." 148

The Humane Society International, (HSI) found that the Issues Paper places too much emphasis on "use" and economic development not conservation. ¹⁴⁹ Beynon argues that conservation needs to be recognised as a fundamental principle in the

¹⁴⁶ Appiah-Mensah, S. "Popular consciousness' of maritime Australia: some implications for a national oceans policy development", 32.

¹⁴⁷ Prideaux, M. "Oceans Policy: providing a safer harbour", *Habitat Australia* 26, no. 3, June 1998,

¹⁴⁸ Ibid.

¹⁴⁹ Beynon. N. "Sustainable seas?", *Bogong* 19, no.4, 1998: 7.

management of marine resources if the use of these resources is found to be economically sustainable. Moreover, it is argued that the definitions for Marine Protected Areas are not adequate for conservation as there is a commitment to multiple use within the areas. "The Humane Society International argues that 'multiple use' is the status quo; it is what happens outside a marine protected area." What is made clear by the conservation groups is that if a marine protected area is to be truly "protected" it must exclude most activities such as mining, defence practice, and should be no-take areas. They go as so far as to say that at least "twenty per cent of Australia's EEZ needs to be conserved in no-take reserves if we are ever to allow fish stocks to recover and achieve anywhere near ecological sustainable oceans." HSI recommends that the Commonwealth should establish an Oceans Act to ensure that marine biodiversity and ESD principles are enforced. They also believe that a new institutional body with its own statutory powers is needed to oversee the development of the policy. 153

The World Wide Fund for Nature (WWF) argue that there is a lack of a strong conservation vision throughout the Issues Paper and that when principles such as ESD, duty of care and ecosystem health are used they are "only in the context of economic uses and resource productivity." The WWF recommends that the oceans policy includes the protection of the marine environment; agreed targets;

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid., 8.

¹⁵⁴ Moore, M. "Oceans Policy: dollar driven?", *Bogong* 19, no.4, 1998.

transparency and review; community participation; and an inclusion of commitments to international conventions, legislation, regulations and strategies. 155

8. MAGOP's Response to the Issues Paper

MAGOP met on 18 June 1998 during the public consultation period to review the Issues Paper, provide further recommendations, identify gaps and to consider any further actions. The results from the meeting were released in a Report in July 1998. The members of MAGOP found that most were in agreement with the outcomes of the Issues Paper with exception to the recommendations on institutional arrangements. Interestingly, "in a number of instances the Group considered presentation of issues in the March 1998 MAGOP Report to be superior [to that of the Issues Paper]". ¹⁵⁷ The Report covers two main sections, the first includes changes that MAGOP feels needed to be included in the final policy document and the second is largely editorial of the Issues Paper where the comments and terms are not questioned for their intent.

9. Conclusion: The Final Steps Prior to the Release of Australia's Oceans Policy Although the Commonwealth attempted to secure a relationship with the states by claiming that existing jurisdictions will not be altered, the states were reluctant to completely endorse the oceans policy. A large part of the development process was

¹⁵⁵ Ibid., 10.

¹⁵⁶ MAGOP, Report of the Ministerial Advisory Group on Australia's Oceans Policy- An Issues Paper, (Canberra: AGPS), July 1998.

¹⁵⁷ Ibid.

organised by Environment Australia, whose decisions reflected Senator Hill's advice. The formation of MAGOP illustrated further that stakeholder and NGO input was a priority but state participation was not, hence the absence of state representation in the Group.

Some discussions were held between the Commonwealth and the states on institutional arrangements and financial commitments, however, by September 1998, Senator Hill indicated that Environment Australia was to complete the final document - without the states. The drafting of the final policy document by Environment Australia emphasised that the policy was a Commonwealth initiative.

The development of the oceans policy was carefully organised so that the final document would be released during 1998, the International Year of the Ocean. The different sectors were represented in the consultation and development process through Commonwealth agencies that dealt with sectoral arrangements together with MAGOP.

The small number of public submissions during the consultation process and lack of general public interest in maritime issues supported Bateman's observations that there is a lack of maritime culture in Australia. Moreover, the difficulties that Herriman and McKinnon articulated with the development of an oceans policy were not overstated – the federal division of powers and complex jurisdictional measures, once again, challenged intergovernmental relations. Despite this, a 'comprehensive' oceans policy document was released by the Commonwealth in December, 1998. The following chapter continues the chronological analysis of the development of

Australia's Oceans Policy by examining the development and implementation of the policy from 1998 to 2003.

CHAPTER SIX

Australia's Oceans Policy Development and Implementation Process 1998 - 2003

1. Introduction

The release of *Australia's Oceans Policy*, one week before the end of the International Year of the Ocean 1998¹, sealed Australia's commitment to comprehensively review its ocean and marine resource policies. The decision by the Commonwealth to develop an oceans 'policy', rather than legislation, allowed for the possibility of future amendments to the policy and institutional structures. The establishment of the National Oceans Office (NOO) underlined the importance of flexibility within the oceans policy by being first located in Environment Australia and then designated as an executive agency.

The formulation of the National Oceans Ministerial Board and National Oceans

Advisory Group, along with NOO, institutionalised the oceans policy

implementation process providing an anchor for decision making with direct access
to the Minister for Environment and Heritage. This chapter argues that the new
approaches to integrating oceans management at the Commonwealth level have

¹ Hill, R., World First Plan to Safeguard Our Oceans, Media Release for the Minister of Environment and Heritage and Environment Australia, 23 December 1998.

altered the traditional relationships between sectors, community/nongovernmental groups and the government.

The oceans policy is implemented through Regional Marine Plans (RMPs) and the south east is the first region addressed by a RMP. Consequently, it will also the first RMP to be evaluated by the Commonwealth and will be used as an indicator for further oceans policy implementation. It is found that the South East RMP has had an impact on the oceans policy process establishing the initial coordination between sectors.

The chapter begins by outlining the content of *Australia's Oceans Policy* and analysing the institutional arrangements established to oversee the implementation of the oceans policy and individual RMPs. Interestingly, the policy document relies on and refers to the Issues and Background Papers for explanatory details, however, it establishes the framework for an integrated approach for sectors and jurisdictions dealing with ocean and marine resource issues in Australia.

2. The Release of Australia's Oceans Policy

The Commonwealth released *Australia's Oceans Policy* on 23 December 1998. The policy is set out in two volumes, *Australia's Oceans Policy* and *Specific Sectoral Measures*.² The aim of the oceans policy is to overcome problems perceived to arise

² Commonwealth of Australia, *Australia's Oceans Policy: Caring, Understanding and Using Wisely*, (Canberra: AGPS), 1998; Commonwealth of Australia, *Australia's Oceans Policy: Specific Sectoral Measures*, (Canberra: AGPS), 1998.

from a division of powers and responsibilities leading to jurisdictional overlap and inconsistencies in ocean management. The policy also intends to overcome the problems and limitations imposed by sectoral based management by supporting integration across sectors.

The first volume of the oceans policy is 48 pages in length, introduced by an opening message from Prime Minister John Howard. He states that

with the release of *Australia's Oceans Policy* we again demonstrate our world leadership by implementing a coherent, strategic planning and management framework capable of dealing with the complex issues confronting the long term future of our oceans.³

The document outlines that the development of RMPs will be the core of the oceans policy and all Commonwealth agencies are bound to those plans.⁴ The first RMP is being developed for the south east region of Australia's exclusive economic zone (EEZ) that includes waters off Victoria, Tasmania, southern NSW and eastern South Australia. States and Territories were invited to endorse the document and the policy stated that they "will play an important part in ensuring its effective implementation." In the Foreword by Senator Robert Hill, it is made clear that the policy is "neither solely an environmental protection nor solely an economic

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³ Commonwealth of Australia, "A message from the Prime Minister", *Australia's Oceans Policy: Caring, Understanding and Using Wisely.*

⁴ Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely, 2.

⁵ Ibid.

development policy," 6 despite the Liberal Party's campaign platform before the election claiming it to be an 'environmental' policy.⁷

The first volume is divided into seven chapters and four appendices. The chapters include "the context for Australia's Oceans Policy"; "integrated and ecosystem based oceans planning and management"; "implementation arrangements for ocean planning and management"; "principles for ecologically sustainable ocean and use"; "implementing Australia's Oceans Policy – some key initial actions"; "marine science and technology and marine industries"; and "Australia's Oceans Policy – next steps." The general statistics that relate to the size of the Australian EEZ, coastline length and the value of marine industries are reiterated in the policy. The first chapter of the first volume summarises the main observations of the Issues and Background Papers. The second chapter reinforces the commitment to ecosystem based management and introduces regional marine planning as the main policy implementation tool.

A commitment to ecologically sustainable development and multiple use management is embedded within the oceans policy framework emphasising a commitment to Agenda 21 principles and the Law of the Sea Convention (see Chapter Four). The policy states that "multiple uses of the same ocean resource should be considered jointly so that their overall impacts on the oceans, and the

⁶ Ibid. 3.

⁷ Liberal Party of Australia, *Environment Policy 1998 Federal Election*, Liberal Party of Australia: Canberra, 1998.

impacts they have on each other can be understood." Ecosystem-based planning and management ensures the maintenance of ecological processes, marine biological diversity and populations of all native marine species. The oceans policy asserts that although conservation of the marine environment and biological diversity values are a priority, "human values will play a dominant role in decisions about oceans."

The oceans policy underpins that A\$50 million is committed to the implementation of the policy and that this builds on the A\$125 million *Coasts and Clean Seas* initiative of the National Heritage Trust. Chapter five of the policy outlines the key initial actions that the Commonwealth will take while implementing the policy and what amount of funding¹⁰ will be allocated to that action. These actions include assessments of the biological resources of Australia's oceans; the acceleration of the development of the National Representative System of Marine Protected Areas; and an increase in marine species protection that includes promoting the establishment of the South Pacific Whale Sanctuary.¹¹ In the subsection on fisheries and aquaculture,

⁸ Ibid., 37.

⁹ Ibid., 10.

Not all areas covered in this chapter of Australia's Oceans Policy have exact monetary figures listed.

¹¹ Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely, 24. Despite Australia's efforts during International Whaling Commission's (IWC) Conference in 2000, a number of smaller countries, particularly those from the Caribbean, voted against the formation of a whale sanctuary in the South Pacific. During the time of the Conference it was alleged that many of the countries who changed their vote from support of the sanctuary to against were offered foreign aid bribes by Japan. In 2001, a Japanese official admitted that "Tokyo uses foreign aid to buy the votes of Caribbean nations to help support their whaling industry" and the Caribbean nations accused Australia of 'intimidating' them into supporting the South Pacific sanctuary. To add insult to injury, during the 2002 IWC Conference, Japan demanded Australia be removed from the Commission when it unsuccessfully brought up the development of the South Pacific sanctuary for the third time. See Australian, "Japan 'buys' whaling support', 19 July, 2001: 3; Australian, "Whale 'intimidation'", 25 July, 2001: 5; Australian, "Tokyo harpoons Canberra as sanctuary bid falters", 22 May, 2002: 7; Plane, T. "When cultures collide", Australian, 8 July, 2000: 26.

the policy committed the Commonwealth to conducting a A\$1.8 million National Recreational Fishing Survey. Additionally, a commitment was made to the development of a National Bycatch Policy.

The Commonwealth committed A\$33 million over four years to identifying new offshore oil zones in Australia's EEZ and states in the oceans policy that it will rewrite the *Petroleum (Submerged Lands) Act* 1967 "to reduce compliance costs for government and the industry while maintaining a high level of environmental protection." The chapter continues outlining the Commonwealth commitments to shipping, marine pollution, marine tourism and community participation. The oceans policy committed the Commonwealth to holding a National Oceans Forum in 1999 with stakeholder participation. The document ends with "next steps" that include the first meeting of the Ministerial Board in 1999; endorsement of the oceans policy by state and Territory Governments; establishment of NOO and NOAG and the commencement of a RMP for the south east region. Following sections of this Chapter detail the process in 1999.

The second volume, *Specific Sectoral Measures*, details the sectoral arrangements in marine resource management how each sector will be supported through the policy. It is 48 pages in length and lists 390 responses to the major areas of oceans planning and management. Together, the two volumes deliver over 400 initiatives for

For further information on the International Whaling Commission and Australia's role in international whaling decisions see Stoett, P. *The International Politics of Whaling*, (UBC Press: Canada), 1997.

¹² Commonwealth of Australia, *Australia's Oceans Policy: Caring, Understanding and Using Wisely*, 26.

Commonwealth agencies. Chapter two of the *Specific Sectoral Measures* is divided into subsections that cover the major sectors. They include 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; and natural and cultural heritage.¹³

The following Specific Measures chapters outline community participation, education and training; understanding the oceans through scientific reporting; and protecting national interests through defence, surveillance and enforcement. This document ends with the measures that will be taken to assess the performance and reporting of those involved with the implementation of the oceans policy. The policy commits to progressive assessments of oceans policy initiatives and an initial review of the progress of implementation within two years of inception. A comprehensive review of the effectiveness of the policy will be undertaken at least every five years. The detailed Sectoral Measures specify the direction of the policy, commitment of the Commonwealth and provide substance to the oceans policy.

All basic commitments in the first document are reinstated according to the sector they are directed to and outline further implementation strategies. From a legal perspective the oceans policy is made up of 48 commitments to adjust the existing

¹³ Commonwealth of Australia, Australia's Oceans Policy: Specific Sectoral Measures.

¹⁴ Ibid., 43.

legal regime; 36 commitments that may result in an adjustment to the existing legal regime and 29 commitments to Australia's international obligations.¹⁵ The oceans policy is vague in regards to "precise mechanisms that would link the Commonwealth's general objectives to the states and their responsibilities."¹⁶ Haward and Herr argue further that the policy emphasises the intragovernmental, rather than the intergovernmental coordination in the implementation of the policy.¹⁷

3. Australia's Marine Science and Technology Plan

Whilst the oceans policy was being developed, the Commonwealth continued with its commitment to develop a comprehensive review of Australia's marine science and technology. The *Marine Science and Technology Plan – Draft for Consultation* was a companion to *Australia's Oceans Policy – An Issues Paper* and was released on 10 June 1998. A Scoping Paper for the Plan was released in May 1997 and the Draft Plan contained information from the 68 submissions that were received in response to the Scoping Paper.¹⁸ The Draft Plan recommended that a coordinating council needed to be established with specialist Commonwealth-state participation "to facilitate the Plan's implementation, maintain a focus on national priorities, and report to the Government."

¹⁵ Rothwell, D. and Kaye, S. "A legal framework for integrated oceans and coastal management in Australia", *Environmental and Planning Law Journal* 18, no.3, June 2001: 287.

¹⁶ Haward, M. and Herr, R. *Australia's Oceans Policy: Policy and Process*, ACORN Phase 2 Workshop, Vancouver 10-11 December 2000.

¹⁷ Ibid.

¹⁸ Michaelis, F. "International year of the oceans – 1998 Australia's policies, programs and legislation", *Research Paper 6*, Science, Technology, Environment and Resources Group, 8 December 1998.

¹⁹ Ibid.

The completed *National Marine Science and Technology Plan* was released on 25 June, 1999 by the Minister for Industry, Science and Resources, Senator Nick Minchin.²⁰ The Plan was developed by an expert Working Group in the Department of Industry, Science and Resources, well away from the Marine Group in Environment Australia that developed the oceans policy.²¹ Reichelt and McEwan note that

in particular, the [Oceans] Policy provides both the themes and the structure to bridge and integrate the actions and jurisdictions of the Commonwealth and the seven state/Territory governments concerned and to link them from the ministerial to the working level, while the [Marine, Science and Technology] Plan helps to better define the responsibilities and tasks of the Commonwealth agencies who will provide the scientific and technical implementation.²²

Senator Minchin noted that the Plan "reinforces the importance of the regional marine planning concept at the core of the Government's oceans policy."²³ The Plan focuses on the problems and opportunities for marine, science and technology in supporting the oceans policy. It outlines three interdependent programs; understanding the marine environment; using and caring for the marine environment; and infrastructure for understanding and using the marine environment.²⁴

²⁰ Minchin, N. Australia's New Vision for Marine Science, Senator Minchin's Office Press Release, Friday 25 June 1999.

²¹ Reichelt, R., and McEwan, A. "Australia's marine science and technology plan: an action plan for Australia's Oceans Policy", *Marine and Freshwater Research* 50, no.8, 1999: 712.

²² Ibid.

²³ Minchin, N. Australia's New Vision for Marine Science.

²⁴ Reichelt, R. and McEwan, A. "Australia's marine science and technology plan: an action plan for Australia's Oceans Policy", 714.

The first program aims to improve the understanding of the Australian marine jurisdiction through seven objectives.²⁵ Of the objectives, three immediate priorities are identified – "defining the boundary of the Australian marine jurisdiction; mapping the form and nature of the seabed; and understanding marine biodiversity and biological processes, particularly by undertaking integrated marine research programs in southern temperate and northern tropical waters."²⁶

The second program has direct relevance to the *Specific Sectoral Measures* and is made up of three groups of objectives. The first group deals with "managing terrestrial and marine industry development in the context of sustainable resource use and conservation of marine environments."²⁷ The second group of objectives deals with scientific research and engineering innovations that underpin various marine industries. The third group of objectives outlines strategies to deal with social and legal issues in marine science and technology. In summary, this program focuses on the development of a scientific basis to multiple use management within Australia's marine jurisdiction.

²⁵ The seven objectives include: to characterise and better understand the geological framework and evolution of Australia's continental margin and adjacent ocean basins; to map the form and nature of the seabed of Australia's marine jurisdiction; to define the boundaries of Australia's marine jurisdiction; to improve understanding of the principal physical and chemical oceanographic processes in Australia's coastal and open ocean waters; to improve predictions of Australian climate variability and change by understanding the role of the oceans in the climate system; to understand marine biodiversity and biological processes in Australia's oceans; to understand the dynamics of Australia's marine habitats and ecosystems. See Commonwealth of Australia, *Australia's Marine Science and Technology Plan*, (Canberra: AGPS), June 1999.

²⁶ Ibid., 3.

²⁷ Ibid., 4.

The third program defines the objectives for future marine research and "concentrates on the provision of infrastructure in support of Australian marine science, technology and engineering."²⁸ It identifies four immediate priorities including

- 1. the improvement of the marine science and technology skills base:
- 2. provision of physical infrastructure, in particular: the refurbishment of the Research vessels *Franklin* and *Southern Surveyor*, and increasing the number of days they spend at sea as National Facilities; and the acquisition of other major facilities;
- 3. Implementation of long-term marine observational programs and, in particular, the provision and deployment of equipment to establish and maintain an Australian Ocean Observing System;
- 4. and improvement of marine date management.²⁹

Australia's Marine Science and Technology Plan outlines the immediate priorities identified within the programs that underpin the South East RMP. Following sections detail the implementation of major priorities through the South East RMP in 2000.

4. The Roles of New and Existing Institutional Arrangements

Australia's Oceans Policy outlines the roles of the institutional arrangements in its third chapter. Interestingly, this model is not an exact replica of the models that were

²⁸ Ibid., 5.

²⁹ Ibid.

suggested by the Issues Paper or Marine Advisory Group on Oceans Policy (MAGOP).

Oceans Planning and Management: Key
National Elements for Australia

National Oceans
Ministerial Board

National Oceans
Advisory Group

National Oceans
Office

Regional Marine Plan
Steering Committees

Figure 6.1 The Institutional Arrangements for Australia's Oceans Policy

Source: Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely, (Canberra: AGPS), 1998, 14.

The institutional arrangements, outlined in Figure 6.1, are Commonwealth initiatives developed to coordinate and implement the oceans policy. The states' lack of formal support for the policy and Senator Hill's decision to draft the final policy document with or without state support has meant that states were not included in the institutional design. Enough scope was allowed in the institutional design for future state involvement and the states were able to contribute to policy decisions through ANZECC. As a consequence, their cooperation in the policy process is encouraged but is not a necessity.

Nevertheless, the oceans policy claims that the Commonwealth arrangements have been designed to encourage cooperation and participation of the states and

territories.³⁰ The oceans policy also makes clear that existing sectoral arrangements will remain, and that the Offshore Constitutional Settlement (OCS) will continue to be "the basis for the management of specific sectors across jurisdictional boundaries."³¹ It goes on to say that "consideration will be given to administrative changes that may be needed so that the full range of cross jurisdictional issues can be addressed effectively in implementing the Regional Marine Plans."³²

4.1 The National Oceans Ministerial Board

The National Oceans Ministerial Board was initiated through the oceans policy and established shortly after its release to oversee the implementation process. Its responsibilities, as outlined in the policy, comprise of coordinating cross-sectoral issues relating to Commonwealth jurisdiction; consulting on priorities for programme expenditure; promoting coordination across agencies that deal with Australia's position in international symposiums; and guiding the National Oceans Office. The Board is also responsible for establishing the National Oceans Advisory Group and Regional Marine Plan Steering Committees.³³ The Board initially consisted of the Ministers for Environment and Heritage (Chair); Transport and Regional Services; Industry, Tourism and Resources; Agriculture, Fisheries and Forestry; and Science.

³⁰ Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely,

³¹ Ibid., 17.

³² Ibid.

³³ Ibid., 15.

The oceans policy asserts that the Board will be able to co-opt other ministers when necessary (such as the Minister of Defence or Minister for Foreign Affairs).³⁴

The Board met for the first time on 11 May 1999 where it agreed upon the constitution of the National Oceans Advisory Group.³⁵ It reports annually to the Prime Minister on its and the National Oceans Advisory Group's progress and gives an assessment on "the effectiveness of Commonwealth activities related to the oceans policy."³⁶ Changes to the Board took place following administrative restructuring after the 2001 federal election. The members of the Board now included the Minister for Environment and Heritage; Industry, Science and Resources; Sport and Tourism; Transport and Regional Services; Forestry and Conservation; Agriculture, Fisheries and Forestry.³⁷ The Board's administrative arrangements were also altered as a result.

4.2 The National Oceans Office

The National Oceans Office (NOO) was established through the oceans policy as a support mechanism to the National Oceans Ministerial Board, NOAG, ANZECC and Regional Marine Plan Steering Committees.³⁸ The NOO makes daily decisions on

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³⁴ Ibid

³⁵ Hill, R., Minister for Environment and Heritage, the Hon Senator Robert Hill, *Media Release*, 13 May 1999.

³⁶ National Oceans Office, "National Oceans Ministerial Board", National Oceans Office internet site http://www.oceans.gov.au, date page last modified: 27 July 2001, date cited: 14 November 2002.

³⁷ National Oceans Office, *Annual Report*, (Hobart: AGPS), 2001.

³⁸ Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely, 16.

the development and implementation of the oceans policy and has secretariat and technical support functions. NOO is

> the main administrative point between the Commonwealth, states and territories on oceans policy implementation, including the involvement of relevant state and territory agencies in the development and implementation of Regional Marine Plans.39

NOO is also responsible for implementing the 390 initiatives announced in the oceans policy. NOO was originally located in Environment Australia, 40 however, this changed in December 1999 when the Office was designated as an Executive Agency under the Commonwealth's *Public Service Act* 1999 (See Chapter Four). Senator Hill explained that "establishing the Office as an Executive Agency will ensure that it is able to report directly to Ministers as a 'whole of government' agency rather than being a part of the Department of Environment and Heritage."41

The process of accountability and responsibility of the NOO was altered so that when the Director of the National Oceans Office reported to the Minister it also communicated to the National Oceans Ministerial Board.⁴² Senator Hill went on to announce that as a result of the executive agency status, a new selection process was to be administered for the director of NOO and the first proposed appointee, Alex Schaap, indicated that he would not "put his name forward for this changed

³⁹ Ibid.

⁴⁰ Ibid., 2.

⁴¹ Hill, R., National Oceans Office Established as an Executive Agency, Media Release, National Oceans Office, 20 December 1999.

⁴² Haward, M. and Herr, R. "Australia's Oceans Policy: Policy and Process".

position."⁴³ Nevertheless, it is argued that the change to executive agency status has meant that the NOO was able to incorporate further sectoral interests into the implementation process.⁴⁴

The National Oceans Ministerial Board discussed whether the NOO should also be considered as a 'prescribed agency'. Under the Commonwealth's *Financial Management and Accountability Act* 1997 a prescribed agency can obtain the financial responsibilities similar to a department of state. The Board has not agreed to this as "NOO could be subject to 'cost recovery' imposed by Environment Australia for tasks it may have absorbed under the original structure."

Following the announcement of NOO's executive agency status, discussions arose amongst policy makers and stakeholders over where the Office should be located. Canberra was the original location of the NOO in close proximity to members of the National Oceans Ministerial Board and its Minister. The Office was to operate in an established public sector environment within Environment Australia with easy access to other government agencies that deal with ocean and marine management issues. The disadvantages to this location were as ubiquitous as the advantages. By being located in Canberra, the Office was not situated within the south east region its RMP was managing. As a consequence, it was argued that the central location alienated industry and major stakeholders.

⁴³ Hill, R., National Oceans Office Established as an Executive Agency.

⁴⁴ Adler, J. and Ward, T. "Australia's Oceans Policy: sink or swim?" *Journal of Environment and Development* 10, no.3, September 2001.

⁴⁵ Paper prepared by Environment Australia, *National Oceans Ministerial Board Meeting 3*, Tuesday 11 April 2000.

As part of Senator Harradine's deal with the government over the partial sale of Telstra, NOO was relocated in Hobart, Tasmania. At the time, Senator Harradine held the balance of power in the Senate and his support on crucial decisions often resulted in the passing or the rejection of a bill. In return, Senator Harradine wanted a benefit for his home state of Tasmania. An alternative location suggested was Wollongong, where the NOO would be in close proximity to the Centre for Maritime Policy at the University of Wollongong. The Centre consists of a group of academics whose research is based on Australian maritime policy. Members of the Centre were heavily involved in the development of the oceans policy and Sam Bateman, former Director of the Centre, was a member of NOAG. Senator Harradine's proposal was nevertheless accepted by the government.

The decision to place the Office in a regional area was fraught with opposition mainly from those who supported Canberra or Wollongong. The NOO's location in Hobart, in Senator Harradine's view, would stimulate job growth and opportunity. Ironically, a substantial number of employees in the Office once operational were from Canberra. Adler and Ward state that

the decentralisation of the NOO was done without the consultation with the states, territories, or Commonwealth agencies...Basing the NOO in a small state away from the national capital has distanced the majority of state governments and agencies from the policy process, is likely to impede orderly policy implementation, and may threaten the policy's national success.⁴⁷

⁴⁶ Personal communication with an Environment Australia employee, 1 July 1999.

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⁴⁷ Adler, J. and Ward, T. "Australia's Oceans Policy: sink or swim?".

Not surprisingly, perhaps employees of Environment Australia, Agriculture, Forestry and Fisheries Australia (AFFA), and Department of Transport and Regional Services (DOTRS) were opposed to the NOO's location.⁴⁸ Their experience of being employed in the division of their departments that dealt with the oceans policy meant that they would have to deal with NOO on a regular basis. An employee of AFFA stated that the oceans policy would become "distorted" if the Office was to be located in Hobart.⁴⁹

The main issues that became obvious during personal discussions with Commonwealth agency employees about the location were administrative costs and the distance between Canberra and Hobart. Whilst these discussions were taking place in 1999, NOO was still located in Environment Australia. A Marine Group employee emphasised the difficulties with the relocation of NOO and stated "only two people working for Environment Australia have said they would move to Tasmania."

Subsequent personal communication with a number of the same individuals and some new contacts from these Commonwealth agencies in 2000 and 2002 only reaffirmed that the location of NOO in Hobart was problematic. However, the reasons for difficulties with the Hobart location in the subsequent interviews had changed. Given technological advances in communication and relative ease in

⁴⁸ Personal communications with officials with responsibilities in ocean policy matters in their agency.

⁴⁹ Personal communication with Agriculture, Forestry and Fisheries Australia employee, 2 July 1999.

⁵⁰ Personal communication with employee of Environment Australia, 26 June 1999.

transport between Hobart and Canberra, the "distance" between NOO and Canberra agencies was not such a problem. In 2000 – 2002, the Commonwealth agencies found that their difficulties remained in "keeping an eye on" the NOO.⁵¹

4.3 The National Oceans Advisory Group

The oceans policy introduces the National Oceans Advisory Group (NOAG) who replaced the Ministerial Advisory Group on Oceans Policy (MAGOP).⁵² NOAG was established on 13 May 1999 and is predominately comprised of NGO members with connections to industry, science, conservation and academia.⁵³ Notably, many of the members of MAGOP were retained within the new Group. The Group is chaired by Dr Russell Reichelt, then Director of the Australian Institute of Marine Sciences (now CEO of the Great Barrier Reef CRC) and met for the first time on 20 July 1999 in Canberra.

NOAG's main role is to report to and advise the National Oceans Ministerial Board. The oceans policy outlines that the main responsibilities for NOAG consist of advising the Board on the scope and effectiveness of the Regional Marine Planning process and acting as a forum for discussion between sectors. Additionally, NOAG examines emerging issues in ocean planning and management; and promotes the

⁵¹ Personal communication with employee Department of Industry, Tourism and Resources, 3 October 2002.

⁵² Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely, 15.

⁵³ Hill, R. New Peak Oceans Advisory Group Established, National Oceans Office Media Release, 13 May 1999. Available at http://www.oceans.gov.au

oceans policy to NGOs and stakeholders.⁵⁴ The National Oceans Office also supports NOAG in its decisions.⁵⁵

4.4 ANZECC

The Australian and New Zealand Conservation Council (ANZECC) was an institutional body that agreed to the role of facilitating intergovernmental (cross-jurisdictional) coordination for the oceans policy. The Council was made up of Environment Ministers from all states, the Commonwealth and Territories as well as New Zealand's Environment Minister. Members of the Ministerial Board who are also part of ANZECC and other relevant state/Commonwealth ministerial councils were to "ensure that linkages are made on issues of mutual interest." ANZECC's main responsibility was to assist Commonwealth and state consultations on the implementation of the oceans policy. Additionally to consulting on intergovernmental issues, the Council discussed transboundary issues that relate to the environment and ocean resources. 57

Whether or not the states 'formally' involved themselves with the oceans policy, they continued to participate in decisions made within the policy community through

National Oceans Office, "National Oceans Advisory Group", National Oceans Office internet site http://www.oceans.gov.au, date page last modified: 27 July 2001, date cited: 14 November 2002.

⁵⁵ Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely, 16.

⁵⁶ Ibid., 17.

⁵⁷ See Hundloe, T. "The environment: how to solve problems that don't respect borders", Australian Journal of Public Administration 57, no.3, September 1998: 87-91. The cooperation of state and Commonwealth Ministers in ANZECC provided the forum for discussing transboundary issues. This too reflected and supported the Oceans Policy's 'whole of government' approach.

ANZECC. The state participation through ANZECC was, however, limited as the ANZECC responsibilities are restricted to environmental matters. Broader marine issues that deal with fisheries or oil and gas proved difficult to address through the ANZECC forum. Nevertheless, ANZECC produced a number of reports that dealt with coastal regionalisation, marine protected areas and environmental indicators for reporting on the State. As of 2001, ANZECC was no longer operational and was replaced by the Natural Resource Management Ministerial Council. Its function is to monitor, evaluate and report on natural resource management, including marine and coastal issues in Australia.

4.5 Regional Marine Plan Steering Committees

The oceans policy introduces the Regional Marine Plan Steering Committees as key institutional arrangements in the implementation process. The Committees are made up of key government and non-government stakeholders, and are be established by the National Oceans Ministerial Board when a new RMP is commenced. The policy

⁵⁸ Haward, M. and Herr, R. Australia's Oceans Policy: Policy and Process.

See ANZECC Task Force on Marine Protected Areas, Guidelines for Establishing the National Representative System of Marine Protected Areas, (Environment Australia: AGPS), 1998; ANZECC IMCRA Technical Group, Interim Marine and Coastal Regionalisation for Australia: An Ecosystem Based Classification for Marine and Coastal Environments, (Environment Australia: AGPS), 1998; ANZECC, Strategic Plan of Action for the Establishment of the National Representative System of Marine Protected Areas, (Environment Australia: AGPS), 1999; ANZECC, Australian National Guidelines for Cetacean Observation and Areas of Special Interest for Cetacean Observation, (Environment Australia: AGPS), 2000; ANZECC State of the Environment Reporting Task Force, Core Environmental Indicators for Reporting on the State of the Environment, (Environment Australia: AGPS), 2000.

⁶⁰ Environment Australia, "About ANZECC", http://www.ea.gov.au/cooperation/anzecc, Date last modified: 1 July 2003, Date cited: 4 July 2003.

Environment Australia, "Natural Resource Ministerial Council", http://www.ea.gov.au/nrm/nrmmc/index.html, Date last modified: 1 July, 2003, Date Cited: 4 July, 2003.

states that they will oversee the development of RMPs along with NOO and report to the Ministerial Board.⁶² Notably, the oceans policy mentions that "state and Territory governments and agencies will be encouraged to participate on the Steering Committees where they are involved in Regional Marine Plans".⁶³

The first Regional Marine Plan Committee for the South East Region was established in November 2000. It consists of nine members from a broad range of relevant disciplines including planning; indigenous; economic and social; environmental; fishing industry; resource management; legal; tourism; and ecology. Interestingly, the Steering Committee does not include any Commonwealth or state government representatives. Adler and Ward argue that as a result, the Committee lacks the "transparent mechanisms for promoting integration of management practices within the federal government."

5. The Implementation Process

The oceans policy outlined a time plan of the development of institutional arrangements and implementation measures. According to Wescott

the expectation that a completely new set of institutional arrangements including the establishment of a Board, Advisory Group, Office and first Regional Steering Committee and the drafting of a Regional Marine Planning Process from

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⁶² Commonwealth of Australia, Australia's Oceans Policy: Caring, Understanding and Using Wisely, 16.

⁶³ Ibid., 17.

⁶⁴ Hill, R. South East Regional Marine Plan Steering Committee, Media Release, Environment Australia, 22 November 2000.

⁶⁵ Adler, J. and Ward, T. "Australia's Oceans Policy: sink or swim?"

scratch within six months was, frankly, unrealistic from the beginning.⁶⁶

The first Regional Marine Planning Workshop was held in May 1999 and the participants consisted mainly of governmental representatives, however, nongovernmental individuals also attended the two day Workshop. Little progress was made on the scope, nature and format of RMPs as the participants were experts in their fields but few had planning experience in multisector issues.⁶⁷ The states made clear that they refused to cooperate fully on the formulation of the RMPs and the Workshop "failed to achieve a major commitment of all governments to the policy."⁶⁸

After a year since the release of the oceans policy, only three out of the five key institutions were established; the implementation process for the RMP had only been drafted and not finalised; and not one state/Territory government had signed the Memorandums of Understanding with the Commonwealth committing to the oceans policy process.⁶⁹ The commitment to hold the National Oceans Forum in December 1999 was also reorganised for April 2000. Nevertheless, the RMP process was recognised as being a key factor in the implementation of *Australia's Oceans Policy*.

⁶⁶ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", *Ocean and Coastal Management* 43, 2000: 872.

⁶⁷ Adler, J. and Ward, T. "Australia's Oceans Policy: sink or swim?"

⁶⁸ Ibid

⁶⁹ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 872.

RMPs are based on large marine ecosystems and are binding on all Commonwealth agencies.⁷⁰ RMPs divide the areas into "natural boundaries" where the ecosystem of each region can be considered as a whole. Morrison argues that by selecting regions based on their ecosystems is "attractive and scientifically advantageous".⁷¹ He goes on to say that

the natural boundaries provide suitable points for delineation of management regimes that will facilitate planning which addresses the protection of natural processes and resources, while considering the wide range of human use needs.⁷²

Juda identifies a number of principles that must be followed if RMPs are to be successful. They include integrated natural science and social perspectives; links between coastal land and impacts on oceans; sustainability; precaution; public participation; equity; a method in addressing externalities; market forces and adaptive management.⁷³ Morrison also acknowledges the importance of RMPs but stresses that the disadvantages need to be recognised in the region that is being managed through a marine plan. Sectoral interests, the need for steering committees and a weak scientific knowledge base are prevalent in his analysis.⁷⁴

⁷⁰ Bateman, S. "Australia's Oceans Policy and the maritime community", *Maritime Studies* no.108, September-October, 1999: 12.

Morrison, R. "Regional marine planning: some general considerations and Australian experiences", Maritime Studies 110, January/February 2000: 12.

⁷² Ibid.

⁷³ Juda, L. "Considerations in developing a functional approach to the governance of large marine ecosystems", *Ocean Development and International Law* 30, 1999: 89-125.

⁷⁴ Morrison, R. "Regional marine planning: some general considerations and Australian experiences", 14.

The oceans policy RMPs aim to integrate and complement state and Commonwealth interests whilst using existing organisational structures.

They will be used to identify natural resources and economic and other opportunities, threats to ecosystem health, ecosystem 'characteristics', baseline inventories, conservation priorities, community interests, and industrial priorities. They will also assist in resolving conflicts of use, the provisions of planning security and the development of indicators of sustainability.⁷⁵

In essence, the South East RMP covers a complex region with four state governments and numerous local governments having some jurisdiction in the region. Moreover, approximately fifty percent of Australia's population lives in adjacent coastal lands to the south east ocean area.⁷⁶

The South East RMP was launched at the long awaited NOAG's "Towards a Regional Marine Plan for the South East" National Oceans Forum held in Hobart.

The 185 individuals present at the Forum represented Commonwealth agencies,

NGOs including conservation groups, and key research institutions. State and local government representation included the New South Wales Cabinet Office; Local Government Association of Tasmania; Western Australian Department of Environmental Protection; New South Wales Fisheries; Victorian Department of Natural Resources and Environment; Queensland Environmental Protection Agency; Department of Premier and Cabinet, Victoria; and Department of Primary Industries,

⁷⁶ Morrison, R. "Regional marine planning: some general considerations and Australian experiences", 16

⁷⁵ Reichelt, R. and McEwan, A. "Australia's marine science and technology plan: an action plan for Australia's Oceans Policy", 713-714.

Water and Environment, Tasmania.⁷⁷ Considering major state agencies were invited by NOO to attend, state representation at the Forum was poor.

The Forum consisted of presentations by the members of NOAG and Workshop sessions. The individuals of NOAG focused on their sector's interest in the oceans policy process and did little to emphasise integration across sectors in their speeches. Nevertheless, there were a number of important outcomes that resulted from the Forum. First, participants agreed that the RMP process should be holistic and the role of stakeholders and their commitments to the policy should be emphasised. Second, the approach to RMPs should be outcome and performance based within a predetermined time period. Cooperation and collaboration was also stressed as being important for government/sector relations. Third, participants also stated that an emphasis on the precautionary approach and environmental management was needed in the RMP process.⁷⁸

Interestingly, the RMP process has four phases of development including the initial notice and scoping of the Plan; determining the economic, social, environmental and cultural characteristics of the Region via assessments; negotiation of options; and drafting and approving options to implement the Plan.⁷⁹ The initial steps towards the implementation of the South East RMP began when the NOO, along with the CSIRO

NOAG, Towards a Regional Marine Plan for the South East, Proceedings of a Forum convened by NOAG to develop the inputs to the first phase of the implementation of Australia's Oceans Policy, the development of the marine planning process for the South East region. Held in Hobart, Tasmania, 14-15 April 2000, (Hobart: National Oceans Office) June 2000.

⁷⁸ Ibid

⁷⁹ National Oceans Office, "Regional assessments for the South-East Regional Marine Plan", http://www.oceans.gov.au/reg_ass_intro.html, date cited: 2001.

and the Australian Geological Survey Organisation (AGSO) jointly funded a A\$2.7 million project mapping the seabed and assessing the marine life in deep waters in the south east region during April and May 2000.⁸⁰ Australia was obligated to map the seabed and continental shelves as a requirement of the *United Nations*Convention on the Law of the Sea. Senator Calvert stated that the seabed mapping was "Australia's Oceans Policy in action, and it is just the beginning."⁸¹

The Environment Minister and Chair of the National Oceans Ministerial Board, Robert Hill, released the *Scoping Paper for the South East Regional Marine Plan* on 31 January 2001. He claimed that "[it] describes the planning process and how people can be involved. It flags some important issues and questions for the Region and invites people to contribute to how the Plan should progress." A *Snapshot of the South East*, a description of the South East RMP was also released. The *Scoping Paper* identified that ecologically sustainable development, the precautionary approach, multiple use management and outcome based planning were the key instruments in implementing a regional marine plan. Performance assessment of the Plan was also recognised as being important in identifying how to increase management effectiveness.⁸³

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National Oceans Office, "A voyage of discovery", Sea Bites: A National Oceans Office Newsletter, October 2000.

⁸¹ Joint statement by the Acting Minister for Industry, Science and Resources, Joe Hockey, and Senator for Tasmania, Paul Calvert, *Images of Seabed in Australia's South East Seas a First*, Media Release, 12 January 2000.

⁸² Hill, R. Marine Plan Moves Forward, Media Release, National Oceans Office, 31 January 2001.

⁸³ National Oceans Office, *The South East Regional Marine Plan Scoping Paper*, (AGPS: Hobart), 2001.

The *Snapshot* described the south east region's marine environment and its uses.

The environment, history and people in the region are detailed in the document. The uses and management section divides the region into sectors including shipping, ports, fisheries, oil and gas, minerals and extractive resources, tourism, defence, conservation and marine protected areas.⁸⁴

In 2002, NOO released Assessment Reports and a Discussion Paper as part of the assessment phase of the South East RMP. The Reports covered a range of issues from the use of ecosystems to the use of resources in the region. The Reports were divided into six key themes that include biological and physical characteristics; uses within the south east region; impacts on the ecosystem; community and cultural values; indigenous uses and values; management and institutional arrangements.⁸⁵ The Reports comprehensively detailed all aspects of the region to an extent that had not been previously detailed. Maps of the sea bed and continental shelf from NOO,

⁸⁴ National Oceans Office, *Snapshot of the South East: The South East Regional Marine Plan*, (Hobart: National Oceans Office), 2001.

⁸⁵ The 2002 Reports included: *Ecosystems – Natures Diversity*, (Hobart: National Oceans Office), 2002; Resources - Using the Ocean, (Hobart: National Oceans Office), 2002; Resources -Macquarie Island's Picture, (Hobart: National Oceans Office), 2002; The Right Bait: Social Contributions of Tourism Fishing Charter Operations to St Helens, Tasmania, (Hobart: National Oceans Office and the Bureau of Rural Sciences), 2002; Marine Matters: Social Contributions of Marine Uses to Communities in the South East Region of Australia, (Hobart: National Oceans Office), 2002; Marine Matters: Atlas of Marine Activities and Coastal Communities in Australia's South East Marine Region, (Hobart: National Oceans Office), 2002; Non-market Economic Values and the South East Marine Region, (prepared by Hassall and Associates Pty Ltd for the National Oceans Office), 2002; Pressures on the Uses in the South East Marine Region, (prepared by DCafe for the National Oceans Office), 2002; Impact of Aquaculture, (Hobart: National Oceans Office), 2002; Impacts of Petroleum, (Hobart: National Oceans Office), 2002; Impacts of Shipping, (Hobart: National Oceans Office), 2002; Risk Assessment for Environmental Management of the Marine Environment, (Hobart: National Oceans Office), 2002; Impact from the Ocean/Land Interface, (Hobart: National Oceans Office), 2002; Technical Review of Impacts Matrices: Final Report, (Hobart: National Oceans Office), 2002; Communities – Connecting with the Ocean, (Hobart: National Oceans Office), 2002; Sea Country - An Indigenous Perspective, (Hobart: National Oceans Office), 2002; Ocean Management - The Legal Framework, (Hobart: National Oceans Office), 2002.

CSIRO and AGSO's mapping expedition were used to illustrate aspects of the region.⁸⁶

The Legal Framework Assessment Report was particularly interesting as it revisited the legal aspects of marine management within the south east region. Moreover, it addressed stakeholder concerns with the current management regime in the living marine resources sector. The largest concerns were from the fishing sector who argued that commercial fisheries are over managed by Commonwealth agencies (AFFA, AFMA and Environment Australia) and there is "inadequate coordination" between the agencies.⁸⁷ Recreational fishing is not addressed in the OCS and representatives of the recreational fishing sector indicated that they would like to be managed by the Commonwealth.⁸⁸

The Conservation sector argued that legislation should be enacted to enforce the goals of *Australia's Oceans Policy*. The sector's particular concern was the overlap of Commonwealth and state regulations and the limitations of the OCS.⁸⁹ The petroleum industry, on the other hand, claimed that it would accept multiple use management, however, it did not "need more regulation." The commercial fishing industry argued that cooperative implementation arrangements were more flexible

⁸⁶ National Oceans Office, *A Summary Paper: Glimpses of the South East Marine Region*, (Hobart, National Oceans Office), 2002: 8.

⁸⁷ National Oceans Office, *Ocean Management – The Legal Framework, The South East Regional Marine Plan Assessment Reports,* (National Oceans Office), 2002, 98.

⁸⁸ Ibid.

⁸⁹ Ibid., 99.

⁹⁰ Ibid., 99.

and advantageous to stakeholders than more regulation.⁹¹ State legislation and states' positions as stakeholders in marine management were not covered in this report.

At the time of writing, the states had not yet signed the Memorandums of Understanding formalising their support for the oceans policy despite the South East RMP process was almost complete. Foster and Haward argue that state support occurred on the officer level where a State Working Group designed to keep the states involved has been established "and negotiations have begun with Queensland and the Northern Territory, the area that is the focus of the second RMP."

The *Draft South East Regional Marine Plan*⁹³ was launched by the Minister for Environment and Heritage, Dr David Kemp, on 18 July 2003.⁹⁴ The Plan was released for public comment with a companion *Principles and Processes*⁹⁵ document and a stakeholder submission form. At the end of the three month public consultation period (October 2003), NOO will collate the stakeholder responses and work towards the completion of the final SERMP. The Draft Plan "outlines the way in which the government and stakeholders are working (and will continue to work) together to maintain ecosystem health while promoting ecologically sustainable

⁹¹ Ibid., 100.

⁹² Foster, E. and Haward, M. "Integrated management councils a conceptual model for ocean policy conflict management in Australia", *Ocean and Coastal Management* 46, 2003: 553.

⁹³ National Oceans Office, *Draft South East Regional Marine Plan*, (Hobart: National Oceans Office), 2003.

⁹⁴ Kemp, D., Minister for Environment and Heritage, Howard Government achieves world first in sustainable oceans management, Media Release, National Oceans Office, 18 July 2003.

⁹⁵ National Oceans Office, *Oceans Policy: Principles and Processes*, (Hobart: National Oceans Office), 2003.

development in the Region."⁹⁶ It proposes specific actions that include *inter alia*, further development of Marine Protected Areas; development of a performance assessment system for both the environment and industries; and improved cross jurisdictional coordination. The draft Plan emphasises that it is not new regulatory regime or layer of management but it uses existing sectoral based management arrangements for its implementation. Nevertheless, it stresses that "clearer links and more consistent approaches for management are required to allow management decisions to better recognise natural ecosystems and the needs of resource users."⁹⁷

The *Principles and Processes* document sets out to make the oceans policy "more operational" and describes major mechanisms to achieve this including an Integrated Ocean Process; Oceans Guidelines; Regional Marine Planning; Cross-sectoral Institutional Arrangements; and Assessing Management Performance.⁹⁸ Of particular significance is the introduction of new institutional arrangements, the Oceans Policy Science Advisory Group and the Oceans Board of Management. The purpose of the Science Advisory Group is to advise on the further development of scientific work programs to support regional marine planning and the implementation of *Australia's Oceans Policy*. The Board of Management will comprise of the heads of relevant Commonwealth departments and will advise the National Oceans Ministerial Board on implementation issues.⁹⁹ The Draft SERMP reinforces that the oceans policy is being implemented through a whole of government approach with a commitment

⁹⁶ National Oceans Office, "Executive Summary", *Draft South East Regional Marine Plan*.

⁹⁷ National Oceans Office, Draft South East Regional Marine Plan, 3.

⁹⁸ Ibid.

⁹⁹ National Oceans Office, *Oceans Policy: Principles and Processes*, 9.

through the institutional arrangements for integration across sectors. Whilst full integration between jurisdictions is yet to be achieved, a number of actions within the Draft SERMP cannot be implemented without state support.

6. Responses to Australia's Oceans Policy and its Implementation

The new institutional structures supporting the implementation of *Australia's Oceans Policy* have impacted the relationships of stakeholders, government agencies and community groups to achieve a whole of government, integrated policy approach. Interestingly, many stakeholders cooperated with the institutions during oceans policy implementation, however, the states continued observing without formally signing on to the process. Despite this, difficulties in marine management arose in intragovernmental rather than intergovernmental relations.

It can be argued that intragovernmental issues were initiated when NOO became an executive agency and was relocated outside Environment Australia. The department responsible for policy development no longer had the opportunity to directly influence its implementation. The Marine Group from Environmental Australia continued to work with NOO, however, its responsibilities changed along with its title to the Marine and Water Division. Environment Australia wanted to continue being involved in key decisions, particularly for the reason that they would receive extra funding being in that position. ¹⁰⁰ Nevertheless, the change of government and

¹⁰⁰ Personal communication with AFFA employee 28 July 2000.

the consequent change of Minister in 2001, lessened the difficulties Environment Australia faced with regard to new projects and funding.

The Commonwealth changed the funding for activities which benefit oceans and coasts by extending the Natural Heritage Trust including the *Coastal Catchments Initiative* and *Australia's Oceans Policy*. ¹⁰¹ In 2002, the Minister for Environment and Heritage, Dr David Kemp announced that the Commonwealth committed A\$1.8 billion to environmental policies. ¹⁰² He also announced a commitment to develop a *National Coastal Policy* and A\$1.8 million was granted to Environment Australia for the development and implementation of the *Coastal Catchments Initiative*. The Initiative focuses on, *inter alia*, water quality 'hotspots' such as the rivers of the Douglas Shire to increase protection for the Great Barrier Reef; Melbourne's Port Philip Bay; and the Derwent Estuary at Hobart. ¹⁰³ This additional funding meant that Environment Australia was able to pursue new policy initiatives with adequate funding separate to oceans policy issues. ¹⁰⁴

Arguably, NOO's relationship with other Commonwealth agencies has also made an impact on policy implementation. The individuals working on oceans policy issues

Environment Australia, "Coasts and Oceans Grant Programs and Funding", http://www.ea.gov.au/coasts/programs/index.html, Last Modified: 1 July, 2003, date cited: 5 July, 2003.

Kemp, D. Minister for Environment and Heritage, Government to Spend a Record \$1.8 Billion on Environment, Media Release, Office of the Minister for Environment and Heritage, 14 May, 2002.

Kemp, D. \$1.8 Million to Protect Coastal Water Quality Hotspots, Media Release, Environment Australia, 5 November 2002; Kemp, D. Increased Protection for the Great Barrier Reef, Media Release, Environment Australia, 30 January, 2003.

The 'hotspots' initiative was widely supported by NGOs. See Humane Society International, Kemp's Bold New Strategy on Biodiversity 'Hotspots', News Release, 20 August 2002.

in DOTRS, AFFA and DISR had a unique working relationship up until 2000. They met regularly, and sometimes informally, to coordinate their positions on oceans issues. It was evident to the individuals that by collectively opposing a decision their position on an issue was strengthened. It was stressed that this relationship did not mean that the views of their departments were ignored. An employee of AFFA explained that "when it comes down to it, they will protect their interests first." Following this, a number of individuals moved to other areas and/or agencies and the coordinated discussions were limited to formal structures including a Senior Officials Group made up of employees from Environment Australia, AFMA, AFFA, DISR and DOTRS that meets every eight weeks with NOO.

During the years 1999 to 2002, the departments dealing with oceans policy issues were 'disillusioned' with the amount of time it took to establish the NOO, South East RMP Steering Committee and other commitments outlined in the oceans policy. An employee of Environment Australia argued that there was "a danger of having the oceans policy ignored." Although delayed, commitments outlined in the oceans policy were kept. The agencies established a close relationship with NOO to "keep an eye on" it and its commitments, and in doing so, increased the level of intragovernmental coordination. 108

¹⁰⁵ Personal communication with DISR employee, 27 July 2000.

¹⁰⁶ Personal communication with AFFA employee, 28 July 2000.

¹⁰⁷ Personal communication with Environment Australia employee, 2 July 1999.

Personal communication with Department of Industry, Tourism and Resources employee, 3 October 2002.

The second factor that has impacted oceans policy implementation is the role of NGOs in decision making. NGO positions on oceans policy issues are institutionally represented in the policy process through NOAG and the South East RMP Steering Committee. NGOs have been invited to actively participate in the National Oceans Forum and subsequent conferences. It can be argued that NGOs are more active in a policy process when opposed to rather than when in favour of decisions, as outlined during oceans policy development (see Chapter Five).

Following the release of the oceans policy, NGOs have not had any immediate major uncertainties with the policy process and have focused on other oceans policy commitments such as the development of the South Pacific whale sanctuary and problems associated with that commitment.¹⁰⁹ Tarte argued that they

have been strongly advocating the development and implementation of an oceans policy for all Australian waters since the United Nations Convention on the Law of the Sea came into force in late 1994.¹¹⁰

In fact, NGOs had to justify why they reacted favourably to government policy.

Tarte explained that

there is an opportunity to develop new and more effective management practices by focusing on the management of ecosystems and not just the exploited or impacted species within those ecosystems. Our task is to not only develop a

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http://www.mccn.org,au.

See press releases from 1999 – 2003 at IUCN, http://www.panda.org; Australian Conservation Foundation, http://www.acfonline.org.au; Australian Marine Conservation Society, http://www.amcs.org.au, Humane Society International, http://www.sreenpeace.org.au; and MCCN,

¹¹⁰ Tarte, D. "Australia's Oceans Policy", *Australian Marine Conservation Society Bulletin* 20, no.3, Autumn 1999.

better management framework, but also to get the key marine interest groups to realise that supporting the policy and participating in a reformed management regime will have long term benefits for all marine interests.¹¹¹

In March 2003, the Victorian National Parks Association, Whale and Conservation Society, Australian Marine Conservation Society and Australian Conservation Foundation released *Oceans Eleven*, a report on the implementation of *Australia's Oceans Policy* and ecosystem based regional marine planning. Eighteen national and regional NGOs are signatories to the report which contains six major recommendations to improve regional marine planning. The Report was specifically released during the beginning of 2003 to be considered during the final drafting of the South East RMP. The conservation groups were concerned that the oceans policy will not deliver an ecosystem based approach and the executive summary claims that "five years on, the movement from policy to action has stalled." The recommendations of the report include

- 1. That ecosystem based management is reinforced as being the heart of the Oceans Policy and regional marine planning.
- 2. That a National Oceans Act and, a sufficiently empowered National Oceans Authority be created.
- 3. That a National Marine Research Council is formed to review and fund an expansion of marine research.
- 4. That the National Representative System of Marine Protected Areas is established with a core network of marine national parks that are of sufficient number and size to protect the range of marine ecosystems in Australia's care.

¹¹¹ Ibid.

Smyth, C., Prideaux, M., Davey, K., Grady, M., Oceans Eleven, (Victoria: Australian Conservation Foundation), 2003.

¹¹³ Ibid.

- 5. That the Commonwealth and state governments make a commitment to community capacity building, education and engagement in regional marine planning.
- 6. That the 11 step process for ecosystem based regional marine planning be adopted.¹¹⁴

Whilst the Report had valid recommendations and they have been taken under consideration by NOAG, not all were recognised by the Draft SERMP. The provisions for legislation are embedded in the oceans policy, however, the enactment of a Commonwealth National Oceans Act is not considered within the SERMP process.

7. Conclusion

The implementation of *Australia's Oceans Policy* is part of a continuum in the marine policy process as well as the first step towards a shift from sectoral management arrangements in Australia. To date, *complete* integration across sectors and jurisdictions has not been achieved. The difficulties with the lack of state participation in the policy process have resulted in the oceans policy being purely a Commonwealth initiative. Although some evidence suggests that states have established a Working Group at state officer level, this interaction with NOO has not been formally recognised and therefore bears little significance for integration across jurisdictions.

¹¹⁴ Ibid.

Stakeholder suggestions for marine management in the South East RMP Assessment Reports and *Oceans Eleven* indicate that each sector has different views on the implementation of the SERMP. To reiterate, the Legal Assessment and *Oceans Eleven* observed that the conservation sector preferred new legislation be established while the fishing sector preferred a coordinated approach to implementation. It is interesting to note that the willingness for the sectors to participate in the regional marine planning process is a major achievement for the Commonwealth, however, complete integration across the sectors will not eventuate with current legal arrangements as outlined in the OCS.

The following chapter analyses the development of ocean and marine policies in Australia utilising the policy community and policy transfer approaches. It examines the development process by illustrating policy change within the 'oceans policy community' and what elements instigated that change. The analysis of the oceans policy community demonstrates a number of interrelated factors that have contributed to policy change, development and implementation.

CHAPTER SEVEN

Australia's Oceans Policy Community: A Continuum in Marine Policy Development

1. Introduction

This chapter utilises insights from the analytical framework, established in Chapter One, that links the concepts 'policy community', 'policy transfer' and 'change network' to examine the primary research question in terms of the empirical research detailed in previous chapters.¹ Arguably, sectoral and jurisdictional integration has not fully occurred despite change to ocean policies since Federation.

Commonwealth institutions that deal with ocean and marine resource management contribute to stability within the oceans policy community by adapting to policy

contribute to stability within the oceans policy community by adapting to policy change. In addition, participation of non-government and non-sectoral based groups has increased in the oceans policy community during policy change and it is found that this participation subsides when change is implemented. As a consequence, this increase of interest in marine issues results in the formation of change networks.

¹ The policy community concept is derived from Homeshaw, J. "Policy community, policy networks, and science policy in Australia", *Australian Journal of Public Administration* 54, no.4, December 1995: 520-532; The policy transfer concept is derived from the work of Evans, M. and Davies, J. "Understanding policy transfer: a multilevel, multidisciplinary perspective", *Public Administration* 77, no.2, 1999: 361-385, and Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", *Governance: An International Journal of Policy and Administration* 13, no.1, January 2000: 5-24. See Chapter One.

The oceans policy community is observed through the examination of three salient periods in oceans policy development in Australia through the dimensions of membership; integration; resources and power.² The chapter begins by examining the first period during the implementation of the Offshore Constitutional Settlement (OCS) from 1982 - 1983. The sector based management arrangements underlying the OCS illustrate the difficulties with achieving change in maritime policies in Australia.

The second period 1997 - 1998 demonstrates an increasing interest in ocean affairs of governments and stakeholders. The approach to marine management continues to be divided, however, a consensus amongst actors is for change across sectors and jurisdictions. Commonwealth agencies during this period are leading advocates for the development of *Australia's Oceans Policy*. The third period analyses 2001 - 2003, the period of oceans policy implementation through to the development of the South East Regional Marine Plan. The aim of new ocean institutions is to achieve policy integration across jurisdictions, however, lack of state support of the oceans policy has delayed this progress. In addition, marine management continues to be sector based and the need for integration across sectors contributes to policy change in the oceans policy community.

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² Refer to dimensions used by Evans, M. and Davies, J. "Understanding policy transfer: a multilevel, multidisciplinary perspective", 375. Also see Table 1.6 in Chapter One.

2. Australia's Oceans Policy Community 1982 – 1983: The Implementation of the Offshore Constitutional Settlement

The implementation of the OCS during 1982 to 1983 was crucial to oceans policy development as it underlined the institutionalisation of sector based arrangements in the management of ocean and marine resources in Australia. This period also emphasised a turning point for intergovernmental relations when the Commonwealth returned jurisdiction from the low water mark to the states through the OCS. Despite this, the Commonwealth continued to have control over the central decision making processes that affected the outcome of the OCS. The oceans policy community during the implementation of the OCS is illustrated by Figure 7.1.

2.1 OCS Policy Community - Membership

Figure 7.1 demonstrates that there were large and varied numbers of actors involved in the oceans policy community during the implementation period of the OCS. Their interests were largely economical and professional and the extent of involvement in the community is reflected in their categorisation. The executive core demonstrates a 'top-down' approach to implementation where the Prime Minister and Cabinet dominated the policy making process.

[INSERT FIGURE 7.1]

The state representatives, although involved in the development of the OCS, distanced themselves from the Commonwealth. The states were wary of the possibility that the Commonwealth could reverse its decision and once again take control of jurisdiction from the low water mark. They were right to be cautious, after the 1983 federal election Prime Minister Hawke sought to uphold sovereignty established by the High Court through the *Seas and Submerged Lands Act* 1975 which allowed the Commonwealth to claim title over the territorial sea. Fortunately for the states this never eventuated as an internal review of the OCS arrangements found the intergovernmental arrangements to be "working satisfactorily."

The coordinating subgovernment reflects the division between state and Commonwealth interests, however, it also exemplifies the sectoral division that dominated the policy community during this period of time. The Commonwealth and state departments were located close to the sectors they managed. In particular, there was a clear distinction between the offshore oil and mining, and fishing sectors within the subgovernment. Councils and Associations that dealt specifically with each sector dominated the subgovernment in this policy community.

The attentive public echoes the division of marine sector management arrangements that resulted from the OCS, but the actors are more varied with changing interests.

The interests of the attentive public were more professional rather than economic.

The offshore oil companies' and professional fishermen's groups had economic

³ CPD (H) *Commonwealth Parliamentary Debates*, House of Representatives, 20 March 1986: 1781; Also see Chapter Two and Chapter Four's section on 'new federalism'.

interests in ocean issues, however, the influx of Australian nongovernmental organisations (NGOs), academics, local science communities and research institutions demonstrates that other vested interests in ocean issues made up the policy community. The Royal Australian Navy also was an active member of the attentive public as it influenced decision making in the subgovernment.⁴

The international attentive public is made up of parties that have economic and professional interests in ocean issues in Australia. International collaborators are a subcategory of the attentive public and include the state parties to relevant international instruments. They are of particular significance to the oceans policy community as the third United Nations Conference on the Law of the Sea (UNCLOS III) was being held concurrently during the OCS negotiations. Domestic policy decisions made by the Commonwealth during this period reflected UNCLOS III negotiations, in particular when the Commonwealth exercised its veto as a response to non-negotiable items introduced by the states.⁵ The OCS also updated arrangements outlined through other international instruments that included the 1873/78 MARPOL Convention for controlling ship sourced marine pollution through the enactment of the Commonwealth's *Protection of the Sea (Prevention of*

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⁴ The Navy was instrumental in the implementation of the OCS's Agreement on Shipping and Navigation.

⁵ Rothwell, D. and Haward, M. "Federal and international perspectives on Australia's maritime claims", *Marine Policy* 20, no.1, 1996: 37.

Pollution from Ships) *Act* 1983.⁶ Baselines were also proclaimed and drawn in conformity with the requirements of the *Territorial Sea Convention* 1958.⁷

2.2 OCS Policy Community - Integration

The frequency of interaction between the actors in the oceans policy community during the implementation of the OCS was dependant on their categorisations. The closer the actors were to the subgovernment the more interaction occurred between them - except amongst sectors. In other words, the vertical interaction was reflected through the top-down nature of the decision making during the implementation and the horizontal interaction across sectors was less frequent. Despite the sectoral divisions a consensus in basic values is embedded in the oceans policy community during this time period. The continuity of this interaction in the oceans policy community is observed in the following time periods.

2.3 OCS Policy Community - Resources and Power

Whilst all actors within the OCS policy community had resources, the relationship between the actors horizontally and vertically was one that was based on the exchange of the resources. The resources consisted of tangible hardware as well as knowledge, arguably the most valuable resource. The exchange of resources within and between sectors and jurisdictions was nevertheless limited. The aim of the OCS

⁶ Haward, M. "Institutional design and policy making 'down under': developments in Australian and New Zealand coastal management", *Ocean and Coastal Management* 26, no.2, 1995: 92.

⁷ Burmester, H. "Australia and a stable legal maritime regime", *Oceans Management Policy: The Strategic Dimension*, (Centre for Maritime Policy: University of Wollongong), 1995, 62.

was to provide functional arrangements for shared management of offshore affairs.

Instead it resulted in an overlap in administration and regulation.⁸

Power was concentrated in the executive core and coordinating subgovernment although some actors from the subgovernment, attentive public and international attentive public on occasions enforced more power than other actors. Nevertheless, the underlying element during this period was the 'power struggle' between the Commonwealth and the states. The OCS reinforced Commonwealth power over the offshore despite the states' control over the territorial sea. The division between jurisdictions and sectors resulted in an *ad hoc* approach to the implementation of the OCS.

3. Australia's Oceans Policy Community 1997 – 1998: The Development of Australia's Oceans Policy

The second key period in the development of Australia's oceans policy, 1997 – 1998, highlights an increasing interest by governments and stakeholders in ocean affairs. The oceans community during this period illustrates the growing consensus across sectors and jurisdictions for policy change. In March 1997, Prime Minister Howard announced the development of *Australia's Oceans Policy* through the 'New Horizons' statement and this initiated new developments in the policy community. This is demonstrated through Figure 7.2.

⁸ Ibid., 62.

[INSERT FIGURE 7.2]

3.1 Oceans Policy Community 1997 - 1998 Membership

The number of participants involved in the oceans policy community during policy development has remained similar to that of the OCS oceans community. Economic and professional interests continued to dominate the interests of the policy community and the executive core reflected the top-down method of implementing decisions. There are some major differences between the two time periods. The community in 1997 - 1998 was made up of a number of actors whose interests were environmentally based rather than economically or professionally. Moreover, these environmental actors represented in Figure 7.2 by Australian NGOs, have moved closer to the subgovernment than in previous periods of oceans policy development and implementation. Their influence on the oceans policy community to consider change across sectors and jurisdictions became vital in the development process of the oceans policy.

The Commonwealth continued to be representative of the executive core with an additional member. The Minister for Environment and Heritage became an executive decision maker along with the Prime Minister and Cabinet in ocean and marine resource issues. The states, on the other hand, moved away from the executive core and into the coordinating subgovernment. The sectors remained divided and Commonwealth departments managing each sector have taken on more specific roles in the policy community, as discussed in Chapter Five. Environment Australia, Australian Fisheries Management Authority (AFMA) and Agriculture, Fisheries and Forestry Australia (AFFA) were located in the subgovernment, close to their ministers in the coordinating subgovernment. The involvement of these

ministers was another major difference in the policy community. Environment Australia's Marine Group became a major decision maker in the development process for the oceans policy. Scientific organisations within the attentive public influenced decision making in the subgovernment and coordinating subgovernment by assisting the Department of Industry, Science and Tourism in the development of the *Australia's Marine Science and Technology Plan*. State parties to international instruments were attentively observing and encouraging the oceans policy community to implement the Law of the Sea Convention (LOSC). Particular encouragement was placed on the executive core to implement Australia's agreement to map the sea bed. This was echoed by scientific actors in the attentive public (see Chapters Five and Six).

3.2 Oceans Policy Community 1997 - 1998 Integration

The frequency of interaction amongst actors during 1997 - 1998 had changed significantly since the implementation of the OCS. The increased membership of environmentally based actors in the oceans policy community resulted in more direct pressure on the subgovernment and executive core from the attentive public. The attentive public managed on occasions to directly influence major decisions made the coordinating subgovernment. For instance, as indicated in Chapter Five, the Marine and Coastal Community Network (MCCN) advocated that the Marine Protected Areas program (MPAs) be included and updated in the oceans policy. The sectors were still divided during this time period, yet communication across the sectors was increasing. The basic values that were observed in the policy community during the implementation of the OCS were still fundamental to the actors with an

understanding that change needed to occur across sectors and jurisdictions. It is important to restate that interaction between the different Commonwealth governments was unique during this period. A professional and personal bond existed between key individuals working on the development of the oceans policy from each Commonwealth agency. The states were involved in the development of the oceans policy up until six months before its release, however, they did not formally sign on to process and were excluded from the executive core. Environment Australia was encouraged to continue the policy development process with or without state support.

3.3 Oceans Policy Community 1997 - 1998 Resources and Power

The exchange of resources was critical during the time of policy development in 1997 to 1998. The Commonwealth provided the Marine Group with resources and the power to control the development process. The Minister for Environment and Heritage was the ultimate decision maker next to the Prime Minister and Cabinet and this provided stability within the executive core. The MCCN was commissioned in May 1998 to survey key actors during the review of the Issues Papers and consequently was given the resources and power that other members of the attentive public could not access.¹¹ The states' involvement in this process may have been limited but their own resources within their jurisdictions were adequate enough for

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⁹ Personal communication with employee of Department of Transport and Regional Services, 2 July 1999.

¹⁰ Haward, M. and Herr, R. *Australia's Oceans Policy: Policy and Process*, ACORN Phase 2 Workshop, Vancouver 10-11 December 2000.

¹¹ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", *Ocean and Coastal Management* 43, 2000: 863.

them to progress with their own coastal and marine policies. The states had the power to choose to have limited involvement in the development of the oceans policy, making the Commonwealth's aim towards integration across jurisdictions more difficult to achieve.

4. Australia's Oceans Policy Community 2001 – 2003: The Implementation of Australia's Oceans Policy - The Development of the South East Regional Marine Plan

The third key period in the oceans policy process examines the implementation of *Australia's Oceans Policy* and the development of the South East Regional Marine Plan. The oceans policy reinforced Commonwealth power and changed the structure of the policy community through the introduction of new institutions. It is important to note that legislative arrangements were not altered - the changes to the policy community were structural rather than legal. The Commonwealth sought to secure valid policy outcomes without the development of a Commonwealth agency that could override state and territory governments or would threaten the cooperative basis of the OCS.¹² The oceans policy aimed to integrate oceans management across sectors and jurisdictions, and it was found that the sectors were working closer together, however, divisions remained. In addition, the states have not formally joined the *South East Regional Marine Plan* process despite evidence of state/Commonwealth communication at state officer level (see Chapter Six).¹³ This is illustrated through Figure 7.3.

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¹² Haward, M. and Herr, R. Australia's Oceans Policy: Policy and Process.

¹³ Foster, E. and Haward, M. "Integrated Management Councils A Conceptual Model for Ocean Policy Conflict in Australia", *Ocean and Coastal Management* 46, 2003: 547-563.

[INSERT FIGURE 7.3]

4.1 Oceans Policy Community 2001 - 2003 Membership

The membership of the oceans policy community during the implementation of the oceans policy changed immensely in comparison to the other two key periods. The introduction of new institutions including the National Oceans Office (NOO), National Oceans Ministerial Board, National Oceans Advisory Group (NOAG) and South East Regional Marine Plan Steering Committee changed the dynamics of the oceans community. Despite these changes, the executive core remained stable with the Minister for Environment and Heritage, Prime Minister and Cabinet continuing to have the implicit key decision making position. The Environment Minister became the figure head of oceans policy decisions without being the routine decision maker. This approach to decision making reinforced top-down implementation methods, reflecting similar approaches examined in the other two key periods in ocean resource management.

The Marine Group of Environment Australia played a key decision making role during 1997 to 1998. This position was replaced with the institutionalisation of NOO in the coordinating subgovernment. The Marine Group continued to have close links to NOO during this implementation period, however, the responsibilities for managing the oceans policy on a day to day basis were extinguished. As indicated in Chapter Six, the other main actors that made up the coordinating subgovernment in the oceans policy community in 2001 to 2003 included the

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¹⁴ The new additional institutions outlined in the Draft South East Regional Marine Plan, if utilised in the final policy, will add to future changes in the oceans policy community.

Ministerial Board and ANZECC/Natural Resource Management Ministerial

Council. The categorisation of the Ministerial Board is not clear as its members include Ministers that were also members of Cabinet. The position of the Board was dependent on the role of its members at the time a decision was being made and it could drift momentarily into the executive core. On most occasions a decision made by the Ministerial Board did not have to be passed through the Cabinet or the Prime Minister and therefore the Board is best represented in the coordinating subgovernment. The South East Regional Marine Plan Steering Committee is located in the coordinating subgovernment as its role is to coordinate the development of the South East Regional Marine Plan.

The actors that make up the subgovernment include NOAG, Environment Australia, Geoscience Australia, AFFA and the states. Geoscience Australia (previously the Australian Geological Survey Organisation) moved from the attentive public position that it had in the policy community in 1997 to 1998 and into the subgovernment underlining their importance of their role in mapping the sea bed and continental shelf.

Environment Australia remained an important actor in the subgovernment as a result of having the same Minister as NOO. Notably, the Marine Group at Environment Australia was renamed the Marine and Water Division so that it could be more easily distinguished from the NOO. As aforementioned, the states did not formally accept

ANZECC was replaced by the Natural Resource Management Ministerial Council in 2001. See Environment Australia, "About ANZECC", http://www.ea.gov.au/cooperation/anzecc, Date last modified: 1 July 2003, Date cited: 4 July 2003.

the oceans policy but they did participate in some meetings and conferences.¹⁶ The states continued to be part of the subgovernment as a result of their jurisdictional responsibilities.

The sectors, whilst they agreed that an 'integrated approach' to decision making was necessary, continued to disagree with some elements of the implementation process. For example, each sector suggested different legal approaches during the assessment of the South East Regional Marine Plan.¹⁷ Interestingly, each sector suggested a process that would benefit their specific needs, rather than a process that would benefit all sectors. The Draft South East Regional Marine Plan illustrates an attempt to further the integrated approach by using the "Integrated Oceans Process" as a major mechanism for implementation. The Process is

designed to address complex marine issues at a regional or national level. The process will be used to add value to current management arrangements. The Integrated Oceans Process provides:

- best practice for integrated marine management;
- clarity of processes for marine managers and stakeholders; and
- security for industry to plan for future development in a multiple-use context.¹⁸

¹⁷ National Oceans Office, *Ocean Management – The Legal Framework, The South East Regional Marine Plan Assessment Reports,* (Hobart: National Oceans Office), 2002, 98.

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Adler, J. and Ward, T. "Australia's Oceans Policy: sink or swim", *Journal of Environment and Development* 10, no.3, September 2001. Also see Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 872.

¹⁸ National Oceans Office, *Oceans Policy: Principles and Processes*, (Hobart: National Oceans Office), 2003.

The attentive public during 2001 to 2003, as in the other two key periods, is vast and varied in membership. There are more indications that some actors were deliberately distancing themselves from the subgovernment, such as some private companies or tourism operators. Others, such as the environmental NGOs aimed at being relatively close to the decision makers in order to scrutinise the decisions and, if need be, lobby against them with other members of the attentive public. The science and technology based actors continued to access the subgovernment and coordinating subgovernment during the development and implementation of *Australia's Marine Science and Technology Plan*. Geoscience Australia began mapping of the seabed and as a result fulfilled the expectations of nation states who were parties to LOSC.

The membership of the international attentive public has changed during the implementation of the oceans policy. The Canadian and New Zealand governments are noted as international collaborators in the policy community and have partaken in and openly observed the development and implementation process. The oceans policy was the first of its kind being implemented and therefore the international attentive public was invited to be involved in the implementation process. International NGOs also observed the process through their regional representatives to ensure that principles and measures established by international instruments were followed (see Chapter Four).

¹⁹ The following international representatives attended the National Oceans Forum held in Hobart 14 – 15 April 2000 – Mr Sam Baird, Department of Fisheries and Oceans, Canada; and Miss Megan Linwood, Ministry for the Environment, New Zealand.

The NGO interest in the whole implementation process is best observed through the *Oceans Eleven* document. Whilst many of the NGOs involved in the drafting of the document are Australian NGOs, the following are branches of international NGOs or have strong international influence with other NGOs: Greenpeace; Humane Society International; International Fund for Animal Welfare; The Wilderness Society; Whale and Dolphin Conservation Society and

4.2 Oceans Policy Community 2001 – 2003 Integration

The interaction between the actors in the oceans policy community during the implementation of *Australia's Oceans Policy* changed when new institutional arrangements were introduced. The executive core and coordinating subgovernment interacted frequently during the policy development and implementation stages, especially due to the cross over of membership in the Ministerial Board and Cabinet. The interaction that Environment Australia once had with the executive core was replaced by NOO whilst the interaction between the Commonwealth departments that was examined in 1997 to 1998 continued through 2001 and 2002. As indicated in Chapter Six, the Commonwealth agencies' collective position enabled them to "keep an eye on" NOO whilst ensuring their interests were being protected.²¹

The interaction amongst sectors had increased through the establishment of the new institutions. The introduction of NOAG ensured that different sectoral groups were represented in the implementation process. The basic values remained the same, however, and as discussed earlier, each sector always protected their own interests. Whilst the interaction across sectors had increased, the sectoral division was still eminent despite the executive core and coordinating subgovernment advocating for integration across sectors.

World Wide Fund for Nature. See Smyth, C., Prideaux, M., Davey, K., Grady, M., *Oceans Eleven*, (Victoria: Australian Conservation Foundation), 2003.

²¹ Personal communication with Employee of the Department of Industry, Tourism and Resources, 3 October 2002.

The states' decision not to sign the Memorandums of Understanding on the Oceans Policy did not alter the amount of interaction with the Commonwealth. The states continued to take part in ocean policy events at their leisure and without formal commitments.²² This decision gave the states the power and opportunity to choose what Commonwealth activities on ocean issues they would support and/or participate in.

4.3 Oceans Policy Community 2001–2003 Resources and Power

The additional institutions in the oceans policy community during 2001 – 2003 have changed the distribution of resources amongst the actors. Coincidently this has resulted in a shift in the exchange of resources and power. Many resources, such as finances, personnel, and information were relocated from the Marine Group and Environment Australia to NOO. As a result, the Marine Group had to adjust to these changes and to a reduction in influence in ocean related matters.²³ The power shift to NOO meant that the Marine Group could no longer make key decisions regarding the oceans policy on a day to day basis.

The individual sectors exercised power in the policy implementation process by being represented by NOAG. They had a single forum where they could voice their concerns and communicate with other sectors' representatives. The exchange of resources was also a priority in the meetings and this, in turn, improved the

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Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy", 872. Five states participated in the National Ocean Forum held in Hobart during April 2000.

²³ Personal communication with AFFA employee 28 July 2000. Also see "Responses to *Australia's Oceans Policy* and its Implementation" section in Chapter Six.

communication amongst the groups. The oceans policy community entrusted power to the international attentive public which resulted in Canada and New Zealand being categorised as international collaborators. Other members of the international attentive public, such as international NGOs, exchanged resources with their national counterparts/branches and observed the policy process. The state parties to relevant international instruments had the power to continue pressuring the Commonwealth to uphold their responsibilities to the ratified agreements.

5. Stability and Change within Australia's Oceans Policy Community

The three key periods of oceans policy development in Australia demonstrate that over time there has been continuity and change with marine resource policies. Both elements bring stability and longevity to the oceans policy community, and provide an insight into survival requirements of a policy community to avoid policy failure. The policy community concept does not completely explain why some elements remain consistent over time and why changes occur. Broader parameters such as external influences, the processes of policy transfer and formation of change networks are used to illustrate how the oceans policy community has adapted to policy change. The following discussions examine some of the factors that have contributed to policy change which include the management of ocean resources and intergovernmental coordination; external pressures such as international commitments and Australian Public Sector reforms.

5.1 Management of Ocean Resources and Intergovernmental Coordination

Two distinct, but interrelated factors have shaped the development of oceans policies in Australia. First, sector based approaches to managing ocean resources and second, the coordination of marine resource management between the state and Commonwealth governments have resulted in a complex oceans regime. As stated in Chapter Two, Section 51 (x) and (xxix) of Australia's Constitution provided the Commonwealth powers to regulate external affairs and fisheries beyond territorial limits. At the time the Constitution was drafted, the Constitutional framers could not be expected to foresee the extent to which these Commonwealth powers would be used in offshore matters.

The Commonwealth did take an interest in ocean and marine resource policies in the 1930s and since that time it has challenged the states' jurisdictions over the offshore. Each challenge has resulted in change to marine policies and to the oceans policy community. For example, the Commonwealth's sovereign rights from the low water mark that were established by the *Seas and Submerged Lands Act* 1973 were upheld by the High Court through the 1975 *Seas and Submerged Lands Case*. Consequently, the states were excluded from the coordinating subgovernment in the oceans policy community. The enactment of the OCS meant that the states regained jurisdiction over the low water mark and their place in the coordinating subgovernment (see Figure 7.1). The Commonwealth and state administrative arrangements have meant that there are overlaps and inconsistencies in ocean policies.

The sectorally based management of ocean and marine resources in Australia is also a factor that has contributed to policy change. Chapter Two outlined the fishing and offshore petroleum and oil mining industries as dominant sectors within the oceans community. It was found that divisions were not only evident between but also within different sectors. Commonwealth agencies that regulate both sectors have provided stability to the oceans policy community by adapting to policy change. For instance, new institutional structures such as the National Oceans Office, National Oceans Ministerial Board, National Oceans Advisory Group and Regional Marine Plan Steering Committees, have emphasised a departure from traditional sectoral arrangements whilst incorporating the legal and jurisdictional framework established through past marine policies.

The focus of the Commonwealth and states within the oceans policy community has been to alleviate the policy inconsistencies, policy overlap and as a consequence reduce sectoral divisions. Table 7.1 summarises the major policy changes and how they affected the oceans policy community.²⁴

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²⁴ For specific details on each policy change see relevant Chapters.

Table 7.1 Policy Actions that Changed Ocean Policy Development and the Oceans Policy Community

Date	Commonwealth Action	States' Responses	Policy Response	Policy Community Changes	Jurisdictional and Sectoral Divisions?
1932 and 1935	Commonwealth used its external affairs and fisheries beyond limits powers to regulate dumping waste at sea and whaling in Australian waters.	States were not concerned with these legislations as they had control over fisheries in Australian waters.	1932 Beaches, Fishing Grounds and Sea Routes Protection and 1935 Whaling Acts were passed.	The legislation had little impact on fishing activities, however, it did introduce the Commonwealth to policy making over offshore issues.	Commonwealth was not involved in the management of marine activities at the time. The oceans policy community consisted mainly of state interests.
1952	Commonwealth decided to legislate for fisheries in their jurisdiction.	States placed pressure on Commonwealth to manage fisheries beyond territorial limits.	Pearl Fisheries and Fisheries Acts 1952 were passed.	Division between sectors and across jurisdictions was established.	The policy overlap and inconsistencies were in their initial stages.
1960	Australian Fisheries Council (AFC) was established.	State Ministers were members of the AFC.	First meeting of AFC did not occur until 1968.	Intergovernmental strains continued to be present. Major fishery management practices were controlled by the states.	Division across sectors and jurisdictions remained.
1967	Commonwealth wanted a clear definition of their responsibilities in offshore petroleum activities. Discussions with the states resulted in the Australian Offshore Petroleum Settlement.	States wanted a clearer definition of their responsibilities in offshore petroleum activities and took part in discussions for the Settlement.	The Australian Offshore Petroleum Settlement consists of the Petroleum Agreement and supporting Commonwealth and state legislations.	Members of the attentive public that were affected by the Settlement had to abide by state and Commonwealth laws depending on where their interests were located.	The stringent guidelines for intergovernmental interaction with regards to petroleum mining fixed the sectoral and jurisdictional divisions in the policy community.
1968	Commonwealth updated the definition of the Continental Shelf.	States wanted a clearer understanding of their and the Commonwealth's jurisdictional responsibilities in regards to the Continental Shelf.	The Continental Shelf (Living Natural Resources) Act 1968 was passed.	State parties to international instruments within the international attentive public placed pressure on the Commonwealth to change the policy in accordance to the provisions outlined in the 1958 Convention on the Continental Shelf.	Although this policy helped define once disputed boundaries, it did not lessen policy overlap and inconsistencies.
1973	Commonwealth used its Constitutional Powers and claimed jurisdiction from the low water mark.	States opposed the changes. They challenged the Commonwealth in the High Court but the Commonwealth legislation was upheld.	The Seas and Submerged Lands Act 1973 was passed. The High Court's decision in favour of the Commonwealth was based on the 1958 Convention on the Continental Shelf and the 1958 Convention on the Territorial Sea and Contiguous Zone.	The states and their agencies in the subgovernment and attentive public were forced out of the executive core and the coordinating subgovernment and made way for Commonwealth agencies.	Divisions across jurisdictions and sectors increased.

Date	Commonwealth Action	States' Responses	Policy Response	Policy Community Changes	Jurisdictional and Sectoral Divisions?
1979	Commonwealth decided that a new fisheries policy was needed with the cooperation of the states. This became the basis to the fisheries package in the OCS. The Commonwealth retained the Australian Fishing Zone. Commonwealth also wanted to overcome their difficulties with jurisdiction over the offshore.	States regained their original jurisdiction over territorial waters up to the three mile limit.	A Fisheries Agreement was reached at the Premiers' Conferences. The Commonwealth Coastal Waters (State Powers) and Commonwealth Coastal Waters (State Title) Acts 1980 were entrenched in the OCS. The OCS came into force in 1983.	The states returned to the coordinating subgovernment. The Commonwealth continued to have control over policy agenda in the executive core. There was a clear sectoral divide within the policy community.	The OCS reinforced divisions across jurisdictions and sectors.
Early 1980s	Commonwealth introduced new institutions and fishing Councils and Associations such as AFIC, NFIC, and FIPCA.	States were dissatisfied with Commonwealth control.	Provisions set out by the OCS were in force.	New institutional arrangements were developed such as the Australian Fisheries Research Council, Commonwealth Fishing Zone Committee and Interdepartmental Advisory Committees. Commonwealth dominated the executive core and subgovernment. Key actors in the attentive public were kept out of the decision making process.	Division across sectors and jurisdictions remained. The Commonwealth's attempt at enforcing better management practices in each sector resulted in overlap in administration and regulation.
1989	Commonwealth wanted to solve fragmentation within Commonwealth and state science and technology research institutes.	States were aware of the fragmentation and found that these institutes and industries had a distrust of governments.	The Review Committee on Marine Industries, Science and Technology released Oceans of Wealth?	Marine science and Technology based members of the attentive public moved closer to the subgovernment. New members entered the policy community as a result of this report such as AMSAT; and later in the mid 1990s AMISC.	Division across sectors and jurisdictions remained. The marine science and technology sector became more cooperative in their dealings with government.
1991	Commonwealth updated the Fisheries Act 1952.	This had minimal impact on the states.	The Fisheries Management Act 1991 was passed.	The Australian Fisheries Management Authority (AFMA) and Management Advisory Committees became part of the policy community.	The policy complexities remained, however, the Commonwealth's administration of AFMA strengthened their control over fisheries in the AFZ.
1991	Commonwealth established the Ocean Rescue 2000 (OR 2000) program.	States agreed to take part in OR 2000 initiatives such as the national network of Marine Protected Areas (MPAs).	The OR 2000 program spanned over a decade. In 1995 the State of the Marine Environment Report was released.	New institutional arrangements were developed such as agencies to overlook MPAs. The attentive public also expanded with new members such as the MCCN.	Division across sectors and jurisdictions remained.

Date	Commonwealth Action	States' Responses	Policy Response	Policy Community Changes	Jurisdictional and Sectoral Divisions?
1992	Commonwealth, states and local government representatives constructed an agreement on the environment. Commonwealth also had pressure from international parties to enforce key environmental principles such as the precautionary principle.	State and Territory governments were eager to develop a uniform approach to environmental issues. They too were pressured by international actors to enforce environmental plans designed for local government levels (for example, local government initiatives were articulated through Agenda 21).	The Intergovernmental Agreement on the Environment 1992 came into force.	Commonwealth agencies were given additional powers in environmental decisions. The international attentive public encouraged the Commonwealth, State and Territory governments to develop this policy. Environmental NGOs lobbied all levels of government during this process. The Australian Conservation Foundation was particularly vocal during the negotiations and had moved in close proximity to the subgovernment of the policy community.	Intergovernmental tensions continued to be present. State/Commonwealth inconsistencies peaked when Western Australia withdrew from the Agreement in 1993.
1992	Commonwealth developed a national strategy for Ecologically Sustainable Development (ESD).	States were involved in the Working Groups during the development of the Strategy.	The National Ecologically Sustainable Development Strategy was released.	Environmental NGOs either supported or rejected the process. Those who accepted Commonwealth financial support were located closer to the subgovernment until the Strategy went into force.	Difficulties in state/Commonwealth relations surfaced when financial issues were a priority. The ESD Strategy was based on sectoral divides. The principles were generally accepted by the sectoral groups.
1994	The Commonwealth wanted to incorporate the major features of LOSC into domestic law.	States did not object to the Act as it dealt with boundary issues outside their jurisdiction.	The Maritime Legislation Amendment Act 1994 was passed.	The Commonwealth placed more attention on marine science and technology with the establishment of AMISC.	Division across sectors and jurisdictions remained.
1991- 2001	After numerous reports on the development of a coastal initiative, the Commonwealth Coastal Policy is developed.	Many reports were rejected by the states. States suggested that the Commonwealth focus on a national approach and to let them continue to deal with local coastal issues in their jurisdiction.	Living on the Coast: The Commonwealth Coastal Policy was released along with the National Coastal Action Plan. States all responded with their own coastal policies.	New institutions (on both Commonwealth and state levels) were formed to deal with coastal issues and became part of the policy community. NGO participation steadied after the Coastal Policies were in place.	Division across sectors and jurisdictions remained. The coastal policy process enhanced divisions across jurisdictions as the Commonwealth once again made policy in a traditional state issue area.
1994	Commonwealth enacted an Act to incorporate major features of LOSC into domestic law.	Act did not propose further participation of states in offshore decision making.	Maritime Legislation Act 1994 was completed.	The EEZ came into effect and the Commonwealth reinforced its position in the executive core.	Division across sectors and jurisdictions remained.
1995	Commonwealth agreed to the development of an "integrated oceans strategy".	States took only minimal notice of this as they were aware of upcoming federal elections.	In the campaign for the federal election, the Liberal Party used the development of an oceans policy as their environmental platform.	Up to the election the Department of Prime Minister and Cabinet assumed responsibility for developing the policy and moved into the coordinating subgovernment in the policy community.	Division across sectors and jurisdictions remained.

Date	Commonwealth Action	States' Responses	Policy Response	Policy Community Changes	Jurisdictional and Sectoral Divisions?
1996	Once elected, the Howard government continued with oceans policy development.	States had minimal involvement during the policy process at this time.	The first consultation paper was being developed.	DEST took over the responsibility of policy development. A number of committees were formed and remained part of the policy community until their tasks were completed. The Environment Minister and Minister for Resources and Energy took on responsibility for the policy and moved to the executive core.	Division across sectors and jurisdictions remained.
1997	Commonwealth released a consultation paper for public comment.	The states and Territories reacted positively to the consultation paper. The Commonwealth assured the states that the OCS would not be overridden.	Australia's Oceans – New Horizons was released.	The MCCN moved closer to the subgovernment when it took part in the consultation process.	Division across sectors and jurisdictions remained. Each entered the consultation process to protect their own interests.
1997	Commonwealth agreed that scientific and administrative coordination of Australia's oceans territories needed to be improved.	States agreed but were not involved in the process.	The Marine Industry Development Strategy was released.	The Strategy was developed by the Department of Industry, Science and Tourism who moved into the subgovernment during this time.	Division across sectors and jurisdictions remained. Some uniformity in technological issues across sectors was evolving.
1997	Commonwealth developed and released Issues and Background Papers to Australia's Oceans Policy.	The states had some involvement in this process but it was limited by the Commonwealth.	The Issues and Background Papers became the supportive framework for the oceans policy.	Environment Australia was in charge of running the policy development process. It was located in the coordinating subgovernment and reported to the Minister for Environment who remained in the executive core. MAGOP was established to assist with the final policy development stages. NGO support also increased with the establishment of MAGOP.	Division across sectors and jurisdictions remained. However, the sectors helped contribute information for the Issues and Background Papers. Their interests were also represented through MAGOP.
1998	Commonwealth developed and released Australia's Oceans Policy utilising an ecosystem based, 'all of government' approach.	Did not formally sign on to the policy but did agree that reform was needed across sectors.	Australia's Oceans Policy was released. The OCS and other legislative arrangements remained the same.	New institutional arrangements (such as the National Oceans Office, the National Oceans Ministerial Board and so on) became part of the policy community. Environment Australia's involvement in policy decisions was minimised. NGO participation increased.	Division across sectors and jurisdictions remained. The implementation of the Oceans Policy through the National Oceans Office had minimised some policy overlap and inconsistencies. Federal complexities were acknowledged and addressed by the policy.

Date	Commonwealth Action	States' Responses	Policy Response	Policy Community Changes	Jurisdictional and Sectoral Divisions?
1998 - 1999	Commonwealth developed a Draft Marine Science and Technology Plan for consultation. The final Plan was released in 1999.	The Draft Plan recommended specific state participation.	The Marine Science and Technology Plan was released.	Department of Industry, Science and Resources developed the Plan and was located in the coordinating subgovernment.	The Plan helped define the responsibilities and tasks of Commonwealth agencies that provided the scientific and technical implementation. The division across sectors and jurisdictions remained, but the parameters set out by the Plan and the Oceans Policy provided a clearer understanding of how to manage each issue more efficiently.
2000	The Commonwealth introduced the development of the South East Regional Marine Plan	States participated in the Forum when the Plan was introduced but are not formally involved in the process.	The South East Regional Marine Plan Assessment Reports released in 2002.	The Steering Committee for the South East Regional Marine Plan was located in the coordinating subgovernment in the oceans policy community.	The Committee does not have any state representation ensuring that divisions across jurisdictions remain. Different sectors are represented in the committee, however, each one has individual objectives.
2003	Release of the Draft South East Regional Marine Plan	Minimal response from states.	Draft South East Regional Marine Plan and Principles and Processes documents are released.	Members of the policy community have been asked to participate in community consultation process over the Draft Plan.	Jurisdictional and sectoral divisions remain, however, specific actions deal with an integrated approach to implementation.

While providing a detailed survey, Table 7.1 does not show the source or objectives for action. It is clear that issues to which the Commonwealth and states responded were often placed on these governments' agenda by pressure from the attentive public or by the international attentive public. It is during this time of pressure from the attentive public that change networks were established. To reiterate, change networks appear when members of the policy community join together to instigate change. Jurisdictional and sectoral divides do not prohibit members from being part of a change network. Their sole purpose whilst in the network is to promote policy change and once this is achieved the network either dissolves or a revitalised policy community is created. This community then interacts over ongoing agendas and issues.

A change network that successfully instigated the process for policy change was formed during the late 1970s. It consisted of members of the attentive public who were particularly concerned with the state of the sector-based management. In addition, the states and Territories advocated the need for change so that they could regain jurisdiction from the low water mark. The membership of a change network is limited, and those involved during this time specifically wanted to ensure that the sectors continued to have their interests protected. Although during periods of stability in the policy community these actors' interests were vastly different, when they entered the change network they shared a set of new casual beliefs that would constitute policy change. Their specific intentions for policy change included that all sectors were recognised in the OCS; that each sectoral interest was protected; and that the states would regain previous jurisdictions. Specific members of the change network that led to the development and implementation of the OCS included Commonwealth and state departments/agencies, fishing and offshore mining Councils and Associations, offshore oil mining companies, recreational and professional fishermen.

Once the OCS was settled the shared intentions for the purpose of the change network dissolved. The members continued to share in the basic beliefs within the policy community, however, their interests were vested in what could benefit their issues of importance. The change network was powerful in that some of its members, such as key state actors including Attorney and Solicitor Generals, were located in the executive core within the policy community. This enabled the network to gather intelligence that would help advocate change.

The actors involved in marine science and technology within the policy community have been predominant in decisions that have lead to policy change on a number of occasions. The first occasion resulted in the release of the Oceans of Wealth? Report.²⁵ The science and technology based members of the policy community came to a consensus that marine science had been undervalued and mismanaged. Together with Commonwealth agencies they advocated the need for change and acknowledgement of the pressing issues. After the Report was released, the change network dissolved and its members returned to prior issues of concern. The Report had a number of effects that resulted from the change in the policy community. First, the problems with ocean and marine research, science and technology were identified. Second, the actors in the attentive public who did not normally have the chance to lobby the subgovernment had a chance to voice their concerns in the Report. These actors included local science organisations, CSIRO and major companies such as BHP. Third, new actors such as Australian Marine Science and Technology Company (AMSAT) and later Australian Marine Industries and Sciences Council (AMISC) were formed to address the issues with marine science and technology.

The policy change did not achieve all desired results. Another change network was formed to address further marine science and technology problems within the oceans policy community. The issues that the change network identified as being in need of address included MPAs; educational programs; an adequate description of the marine

²⁵ Review Committee on Marine Industries, Science and Technology, *Oceans of Wealth?*, Department of Industry, Science and Technology, (Canberra: AGPS), 1989.

environment; and the establishment of a monitoring system.²⁶ This resulted in the release of the State of the Marine Environment Report (SOMER).²⁷ The change network also succeeded in bringing about change in the policy community during 1997 when the *Marine Industry Development Strategy* was released.²⁸ This time, however, the membership had changed in the network and environmental groups were advocating policy change along with science based organisations. Following the release of the Strategy, the subgovernment policy community members pressured the executive core to develop *Australia's Marine Science and Technology Plan*. The change network emerged once again and a Marine Science and Technology Plan Working Group was established to complete the Plan. *Australia's Marine Science and Technology Plan* was released in 1999.²⁹

A number of conclusions can be drawn from the marine science and technology change networks that evolved to advocate change in the oceans policy community. The changes themselves have been incremental in nature. When the network dissolved after change and the desired outcome did not eventuate, the network re-emerged to stimulate change until it did. Each time the network re-emerged its membership was altered, where either new members entered the network from the policy community or old members became uninterested in further change. Nevertheless, the actors who rejoined the change networks each time they emerged provided a consistency in their actions that

²⁶ Tarte, D. "Our sea, our future...major findings of the SOMER for Australia", *Waves Newsheet of the MCCN* 2, no.1, March 1995.

²⁷ Commonwealth of Australia, *State of the Marine Environment Report*, (Canberra, AGPS), February 1995. Also see http://www.ea.gov.au/coasts/information/reports/somer/#about.

²⁸ Department of Industry, Science and Tourism, *Marine Industry Development Strategy*, (Canberra, AGPS), 1997.

²⁹ Commonwealth of Australia, *Australia's Marine Science and Technology Plan*, (Canberra: AGPS), June 1999, 3.

secured policy change and provided support for further changes within the oceans policy community.

A number of change networks can exist in a policy community at the one time. Whilst a network worked towards change in marine science and technology policies, another change network was evolving that aimed to change existing marine resource management practices and to influence the development of a national approach. This change network began to form during the 1990s and its membership was limited but varied. Commonwealth agencies predominantly made up the network and although the sectoral divides existed in the oceans policy community at the time, actors with various interests in ocean management also joined the change network. Environment Australia became the leading agent for policy change and other Commonwealth agencies such as DISR, DTRS, AFFA, and AFMA, also became part of the network that advocated change in ocean and marine resource management. These agencies during stable conditions had specific roles within the oceans policy community. Their focus temporarily turned towards supporting Environment Australia in the development of a national approach to oceans management.

Actors representing different sectors, for instance CSIRO; fishing companies; the Australian Seafood Industry Council (who changed its name from NFIC to emphasise its commodity focus); indigenous groups and offshore oil mining companies, supported this change network. In times of stability within the policy community these actors' interests were directed at their economical and professional responsibilities.

Nevertheless, they recognised the need for change in ocean and marine resource management and other members of the policy community agreed. Difficulties within

and between sectors continued to be eminent for some actors in the change network but the need for a national approach to ocean management became a priority. The Royal Australian Navy had a structural interest in the oceans policy community. Following the release of the Issues Paper for Public Comment, the Navy joined the change network to voice changes to the draft policy document.³⁰ It had particular interest in the "exemption on the pretext of operational requirements from the forthcoming ban on the use of Tributyltin (TBT) as an antifouling paint on ships."³¹

The number of non-government and non-sectoral based interest groups increased during this time period and their influence on the executive core and coordinating subgovernment also contributed to policy change. Members of the attentive public, especially environmental NGOs, took great interest in lobbying for a national approach to the management of ocean resources.³² It was also an opportunity for the NGOs to encourage changes that supported their causes. Their role in the change network was crucial as it increased their contact with the subgovernment that in times of stability would not be so frequently exercised. The MCCN was a leading NGO figure that actively took part in the process of policy change. It was commissioned by Environment Australia to establish the policy consultation program and this enabled

Appiah-Mensah, S. "Popular consciousness' of maritime Australia: some implications for a national oceans policy development", *Journal of the Australian Naval Institute*, July/September, 1998: 32.

³¹ Eadie, E. "Evaluation of *Australia's Oceans Policy* as an example of public policy making in Australia", *Maritime Studies*, no. 120, September – October 2001.

Tarte argues that environmental NGOs "have been strongly advocating the development and implementation of an oceans policy for all Australian waters since the United Nations Convention on the Law of the Sea came into force in late 1994." See Tarte, D. "Australia's Oceans Policy", Australian Marine Conservation Society Bulletin 20, no.3, Autumn 1999.

other actors within the policy community to continue with policy development issues.³³ The MCCN played a large role in representing NGOs in the policy development and implementation process. Once this role was completed it resumed its position within the attentive public of the policy community.

Other NGOs advocated the need for change during the 1990s but disappeared as soon as the need for change in ocean and resource management was recognised by the executive core. Their brief and spontaneous appearance still supported the intentions of the change network. Spontaneous issue groups appear in a policy community generally to achieve some change and disappear when that change has occurred.³⁴ Arguably, these spontaneous issue groups are most likely to appear when change networks are forming.

A number of environmental NGOs entered the oceans policy community and the change network during this period, however, they resumed other interests when policy implementation began. These NGOs included the Australian Conservation Foundation (ACF), Greenpeace, World Wide Fund for Nature (WWF) and the Humane Society International (see Chapters Five and Six). Notably, these groups spontaneously appeared in the policy community when there was an issue that drew their attention. They often resolved the issue in the attentive public and left when it no longer concerned the policy community. As argued in Chapter Six, NGOs are more active in a policy process when opposed to rather than when in favour of decisions, and this enables them to act spontaneously when an issue arrises.

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³³ Wescott, G. "The development and initial implementation of Australia's 'integrated and comprehensive' Oceans Policy".

³⁴ Pross, A.P. *Group Politics and Public Policy*, 2nd ed., (Toronto: Oxford University Press), 1992, 104.

Power in this change network was ultimately with Environment Australia who accepted the need for change and then implemented it. Pressure and support from other members of the change network enabled the change to be followed through. The frequency of interaction between the actors within the change network was high in order to succeed in policy change. Many of these alliances that were made in the change network disappeared once the oceans policy was developed. Environment Australia, for instance, worked closely with DOTRS and DISR with the development of the oceans policy. The closeness of this alliance dissolved after the release of the policy for a number of reasons. First, Environment Australia's position in the implementation of the policy had changed and the NOO became responsible for the day to day administration of the policy. Second, DISR and DTRS had their own agendas to fulfil through the implementation of the policy. Richardson argues that too many actors in a policy community can cause unpredictable behaviour. It is this unpredictable behaviour within change networks in the oceans policy community that led to policy change.

5.2 External Pressures

5.2.1 State Parties to International Instruments

It is too simplistic to argue that ocean and marine resource policy changes that occurred in Australia were only a result of management of resources within and between sectoral groups and jurisdictional struggles. Changes within the oceans policy community have also been structured by broader parameters, in particular influences from international

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³⁵ Richardson, J. "Government, interest groups and policy change", *Political Studies* 48, 2000: 1008.

state parties and institutions with an interest in ocean matters. During the three key periods in oceans policy development and implementation, the executive core of the policy community has had pressure to conform to international obligations and to implement the principles of ratified international agreements into domestic policies.

The international attentive public, in particular international collaborators, have not worked alone in pressuring the executive core in order to make decisions, they have often interacted with the attentive public and have jointly applied pressure. This can be seen on a number of occasions, the first being during OCS negotiations. Australia was greatly encouraged to implement decisions that were being made during UNCLOS III negotiations at the time. Secondly, the attentive public and the international attentive public, in particular environmental NGOs, applied pressure on the executive core to incorporate sustainable development principles to domestic policy. The environmental NGOs included the ACF, WWF, Wilderness Society and Greenpeace – all which have branches in Australia. Other NGO groups including businesses, industry and union groups with interests in sustainable development also applied pressure on the executive core. A number of these NGOs were represented in the Working Groups that led to the development of the Ecologically Sustainable Development Strategy.³⁶ It is important to note that Greenpeace and the Wilderness Society withdrew from negotiations over the Ecological Sustainable Development Strategy even though they originally lobbied for its development (see Chapter Three).³⁷

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³⁶ ACF and WWF, Dancing with Wolves: An Information Bulletin on the Ecologically Sustainable Development Process, no.1, April 1991.

³⁷ Ibid.

The international attentive public, as observers, have watched the oceans policy development and implementation process with interest. The oceans policy development and implementation process itself was unique and therefore of interest to other western liberal democratic nations with similar ocean and marine management issues to Australia. A number of these observers were invited by the Commonwealth and the oceans policy community to be involved in the policy process.

As international collaborators, New Zealand and Canada were invited to participate during policy implementation and have had the opportunity to take part in the process of policy learning, policy transfer and lesson drawing (as described in Chapter One). New Zealand was involved in ANZECC and the Natural Resource Management Ministerial Council during the oceans policy development and implementation.³⁸ Being part of the main institutional structure of oceans policy implementation has meant that New Zealand has had 'inside' access to policy decisions and institutions. It also sent a representative to participate in the National Oceans Forum in April 2000.³⁹ Cozens argues that *Australia's Oceans Policy* has provided New Zealand a "point of reference, giving guidance and principles of direction, to national and local policy makers..."⁴⁰

Canadian officials also participated in the oceans policy development process and were invited to the National Oceans Forum.⁴¹ Unlike New Zealand, Canada has not been able

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³⁸ Environment Australia, "About ANZECC", http://www.ea.gov.au/cooperation/anzecc, Date last modified: 1 July 2003, Date cited: 4 July 2003.

³⁹ Miss Megan Linwood, Ministry for the Environment, New Zealand, attended the National Oceans Forum in Hobart, 14-15 April, 2000.

⁴⁰ Cozens, P. "An Australasian Oceans Policy?" *Maritime Studies*, no. 115, November – December 2000.

⁴¹ Mr Sam Baird, Department of Fisheries and Oceans, Canada, attended the National Oceans Forum in Hobart, 14-15 April, 2000.

to gain membership within institutional structures, however, it has never hidden its interest in the oceans policy development process. The Canadian oceans community has had a number of 'oceans policies' and is governed by the Canadian *Oceans Act* 1997. A number of difficulties with ocean and marine resource management have been identified with ocean policy development in Canada. The Canadian Oceans Policy developed in the 1980s was not successfully implemented and its failure was announced in 1987.⁴² The *Oceans Act*

has been criticised for being too general and lacking firm commitments or deadlines; failing to embrace other important guiding principles such as pollution prevention, polluter pays, public participation, community-based management, intergenerational equity, and indigenous rights; failing to achieve the level of integration promised in the Act; and allowing too much political discretion to ensure effective implementation.⁴³

The advice of Canadian officials has been particularly sought by the coordinating subgovernment during the oceans policy development stage. In fact, the Second Background Paper suggested that if *Australia's Oceans Policy* is to succeed, lessons from Canada's policy failures and difficulties must be examined.⁴⁴ If anything, the Canadian experience demonstrated to the Australian oceans policy community that immediate legislation in the form of an Oceans Act would not solve the difficulties of ocean and marine resource management.

⁴² Herriman, M., Tsamenyi, M., Ramli, J. and Bateman, S. "Other countries of interest", *Australia's Oceans Policy: International Agreements, Background Paper 2*, A Report Commissioned by Environment Australia, October 1997, available as html at http://www.oceans.gov.au

⁴³ Ibid.

⁴⁴ Ibid.

The intentions of the international attentive public are also embedded in the possibility of policy transfer within the oceans policy community. Dolowitz and Marsh argue that policy goals, content, instruments, programs, institutions, ideologies, attitudes and negative lessons are elements that can be transferred. Transfer has occurred on many different levels in the oceans policy community. On the one hand, Australia was obligated to transfer principles from ratified international agreements to domestic policy. On the other hand, domestic policies that dealt with ocean and marine resource management were being observed and transferred to similar policy communities by international collaborators.

Arguably, the transfer of oceans policies to the international attentive public has been voluntary as a result of the willingness of the Australian oceans policy subgovernment to include international collaborators in some activities in the policy process. New Zealand and Canada have been in the position within the oceans policy community to take part in policy transfer when necessary. In 2000, New Zealand announced the development of its own Oceans Policy. Similarly to the Australian oceans policy process, the New Zealand government is developing the policy in stages with a focus on public consultation between each stage and the inclusion of new institutional structures.⁴⁶ The policy is to be released in late 2003 and will establish the following institutional arrangements: Ad Hoc Ministerial Group; Oceans Policy External

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⁴⁵ Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", 9.

⁴⁶ New Zealand, "Oceans Policy – Developing the Policy", http://www.oceans.govt.nz/policy/develop.html, Date cited: 15 July 2003.

Reference Group; Officials Steering Group; Oceans Policy Secretariat; Working Groups; Oceans Policy Group Chair; and Departmental Reference Group.⁴⁷

In 2002, Canada released *Canada's Oceans Strategy*, which builds upon the *Oceans Act* and provides an "integrated approach to ocean management, coordination of policies and programs across governments, and an ecosystem approach." Similarly to *Australia's Oceans Policy*, the Strategy establishes a framework based on sustainable development, integrated management and the precautionary approach. Arguably, the development of Canada's Oceans Strategy and New Zealand's Oceans Policy illustrates that policy transfer has occurred. Policy goals, content, instruments, programs, ideologies, institutions, attitudes and negative lessons are some elements in these two cases that were transferred.

It is important to note that the exact details of policy transfer between different policy communities is not the basis to this analysis, however, it is useful to observe how transfer has affected the Australia's oceans policy community. It is found that keeping the lines of communication open between the oceans policy community and the international attentive public has been useful to all actors involved, whether or not policy transfer was involved. Moreover, the influence of the international attentive public has grown over time in the oceans policy community. Technology and other advances in communication have played a large part in this development along with a

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⁴⁷ New Zealand, "Stage Two Project Structure", http://www.oceans.govt.nz/policy/develop.html, Date Cited: 15 July 2003.

⁴⁸ Fisheries and Oceans Canada, *Canada's Oceans Strategy*, (Ottawa: Fisheries and Oceans Canada), 2002.

⁴⁹ Ibid.

global awareness of the ocean issues. Each attempt at improving marine resource management has become interesting to coastal nations with similar problems.

5.2.2 Public Sector Reforms

Policy changes to the oceans policy community have also occurred as a result of public sector reforms (see Chapter Four). The reforms themselves did not directly aim to bring change to the oceans policy community, however, by reconstructing Commonwealth agencies that manage marine and ocean resources the community did change. The Commonwealth agencies' roles were no longer perceived as that of public 'service' but as 'management' and this brought some instability to the actors within the oceans policy community. The changes to the public service provided an environment that allowed for the development and implementation of *Australia's Oceans Policy*. The *Public Service Act* 1999 did not directly relate to ocean and marine matters. The provision that allowed the government to develop executive agencies brought an opportunity to the executive core to establish a new institution, the National Oceans Office, was not only a first for the oceans policy community but also for the Commonwealth.

5.3 Stability in the Oceans Policy Community

Richardson argues that stability in a policy community can become the source instability and unpredictable outcomes.⁵⁰ The analysis of *Australia's Oceans Policy* demonstrates that relative stability within the executive core is required to sustain the policy community and this has contributed to further change. The exploration of early

⁵⁰ Richardson, J. "Government, interest groups and policy change", 1008.

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ocean and marine policy development has found that the Commonwealth made all key executive decisions. Although the Commonwealth lost power and jurisdiction when waters from the low water mark were returned to the states through the *Commonwealth Coastal Waters (State Powers) Act* 1980 it was a decision that was constituted within the executive core.

Other periods examined in this chapter support this by illustrating that when changes occurred to the oceans policy community, the members of the coordinating subgovernment, subgovernment and attentive public also changed. The nature of Australia's political system requires that the people who take on the role of the Prime Minister and who make up the Cabinet will change from one period to the next. Despite the change in personnel, the role of the Prime Minister, Cabinet and Environment Minister have remained central to the mechanism of the executive core and the oceans policy community.

Change networks were more likely to form during stability in the policy community as the issues and problems became more obvious to actors involved. Commonwealth institutions have also contributed to stability within the oceans policy community by adapting to change. The new institutions such as NOO, NOAG and the National Ministerial Board changed the role of existing departments such as Environment Australia, however, stability returned to the policy community relatively quickly. As argued in Chapter Six, Environment Australia found new challenges through the *Coastal Catchments Initiative* and it has remained informed of oceans policy developments.

6. Changes Beyond 2003 - Conclusion

As this thesis was being compiled, integration across jurisdictions was yet to occur in the oceans policy community. Chapter Six outlines that the states had not formally signed to the oceans policy despite being involved in the oceans policy implementation at state officer levels. The sectors have been working closer together through NOAG and the South East Regional Marine Plan Steering Committee, however, it cannot be claimed that there is integration across sectors and jurisdictions. The 'whole of government' approach has worked effectively during policy implementation and arguably this is a result of stability within the oceans policy community. Arguably, it was the strength of the executive core that sustained the oceans policy community over time. As soon as the executive core loses interest in ocean issues and it discontinues being part of the executive's agenda, the oceans policy community will fail to exist.

The change networks that appeared during the development and implementation of the oceans policy succeeded in instigating change in ocean and marine policies. The change networks also provided an understanding of why certain actors in a policy community behave the way they do, a factor that the policy community concept cannot demonstrate alone. For example, the change network demonstrated that NGOs are more likely to be present during policy change than during periods of stability within the oceans policy community.

Each time period 1982 - 1983, 1997 - 1998 and 2001 – 2003, has demonstrated that the types of actors that have taken an interest in ocean and marine resource policies have changed. Jurisdictional and sectoral interests continued to dominate the policy

community throughout each period, yet the number of non-governmental and non-sectoral based groups increased with time. NGOs have been vital members of change networks, increasing their status in the policy community and rejoining the attentive public when the changes were completed. Additionally, they have encouraged the use of sustainable practices in ocean and marine resource management and this has been reflected in *Australia's Oceans Policy*. NGOs and non-sectoral based groups, who have not had a permanent presence in the policy community, have contributed to policy change by being spontaneous issue groups when specific issues relating to their cause have arisen.

CONCLUSION

This thesis has traced the evolution of ocean and marine resource policies in Australia leading to the development and implementation of *Australia's Oceans Policy*. The thesis has explored the legal and jurisdictional framework that has shaped marine policy decisions with a particular emphasis on the relationship between the Commonwealth and the states. A focus of analysis of this relationship has been on the development of Commonwealth marine based administrative arrangements and their relationships with sector based marine industries.

This thesis has argued that despite significant policy change, the sectoral and jurisdictional management of ocean resources reinforced by offshore federalism, has made it difficult to implement a fully integrated oceans policy. The analysis of the development of *Australia's Oceans Policy* has demonstrated that change to ocean policies has resulted from policy drivers that are both a part of and external to the policy process.

To assist in analysing the development and implementation of *Australia's Oceans*Policy, this thesis utilised and extended the policy community approach which was derived from the work of Pross¹ and Homeshaw². The policy community approach was used to illustrate the roles of significant actors involved in the policy area, the

¹ Pross, A.P. *Group Politics and Public Policy*, 2nd ed., (Toronto: Oxford University Press), 1992.

² Homeshaw, J. "Policy community, policy networks and science policy in Australia", *Australian Journal of Public Administration* 54, no.4, December 1995: 520-532.

relationships between these actors and how these relationships influenced policy change. The policy community approach, however, did not explain the dynamics of policy change and the concepts policy transfer³ and transfer network⁴ were examined to broaden the conceptual framework used to analyse the oceans policy.

The examination of both policy community and policy transfer approaches demonstrated that when used jointly they provided analytical strength, however, they failed to conceptualise the extent of international involvement in policy decisions, especially during policy change and policy transfer, and why policy change occurred without transfer. Two new conceptual developments were introduced to overcome the limitations posed by both the policy community and policy transfer approaches. International collaborators were identified as a subcategory of the international attentive public that deliberately involved themselves in the ocean policy process. Their roles were recognised as being the 'movers and shakers' of international policy trends encouraging the implementation of these trends into domestic policy.

Chapter Seven demonstrated that international collaborators played a large part in the oceans policy development process, in particular Canada and New Zealand. The examination of the Canadian and New Zealand governments' open observation and participation in the oceans policy development and implementation process demonstrated that their presence in the international attentive public was significant

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³ See Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", *Governance: An International Journal of Policy and Administration* 13, no.1, January 2000: 5-24; Evans, M. and Davies, J. "Understanding policy transfer: a multilevel, multidisciplinary perspective", *Public Administration* 77, no.2, 1999: 361-385.

⁴ Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multidisciplinary perspective", *Public Administration* 77, no.2, 1999.

as they too were obligated to develop and implement a comprehensive approach to marine management within their exclusive economic zones. Their observation of the oceans policy process was not accidental, both nations deliberately observed an oceans policy development and implementation process that was new and untried. It was argued that Canada and New Zealand had possibly formed transfer networks to transfer policy ideas, goals, programs, institutions and content to their political systems. Evidence which reinforced this was that the Australian Commonwealth invited both New Zealand and Canadian representatives to participate in development processes, and that both states had shortly after instigated the development of their own oceans policies and strategies.⁵

The change network concept was introduced to identify the dynamics of policy change without the process of transfer. Analysis of *Australia's Oceans Policy* revealed that change networks altered relationships within the oceans policy community to instigate the process of change. Three change networks identified in Chapter Seven directly influenced change in the oceans policy community and resulted in the development of the *Offshore Constitutional Settlement*, *Australia's Marine Science and Technology Plan* and *Australia's Oceans Policy*. All three change networks demonstrated that nongovernmental organisations played a large part in policy change; some change networks existed simultaneously in the oceans

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⁵ See Fisheries and Oceans Canada, *Canada's Oceans Strategy*, (Ottawa: Fisheries and Oceans Canada), 2002 and New Zealand, "Stage Two Project Structure", http://www.oceans.govt.nz/policy/develop.html, Date cited: 15 July 2003. The following international representatives attended the National Oceans Forum held in Hobart 14 – 15 April 2000 – Mr Sam Baird, Department of Fisheries and Oceans, Canada; and Miss Megan Linwood, Ministry for the Environment, New Zealand.

policy community; and when the network did not achieve change it re-emerged during periods of policy stability.

The research has chronologically detailed the domestic marine policy developments through Chapters Two, Three, Five and Six, and external policy influences through Chapter Four. The ratification of the *United Nations Convention on Law of the Sea* 1982 (LOSC) and the proclamation of Australia's Exclusive Economic Zone in 1994 reinforced the notion that a comprehensive review of Australia's ocean and marine policies was required. Domestic interests used LOSC to push a new marine agenda for policy makers.

Australia's obligations to LOSC alone did not persuade groups of actors in the oceans policy community to advocate policy change. An array of international instruments focused on global environmental issues, outlined in Chapter Four, stimulated international, national and local governmental and nongovernmental interest in the implementation of ecologically sustainable development principles to marine resource policies.

This thesis has argued that an oceans policy community has existed in Australia even during colonial rule, that actions by those involved in maritime affairs and the division of responsibilities over marine resources has provided groups of actors a role within the policy community. Stability in the executive core (namely the Prime Minister, Commonwealth Ministers and on some occasions State Premiers) of the oceans policy community has contributed to the community's longevity. Interest in oceans issues by executive policy decision makers is essential to the continual

implementation of *Australia's Oceans Policy*. New institutional arrangements established by *Australia's Oceans Policy* such as the National Oceans Office, National Oceans Ministerial Board, National Oceans Advisory Group and Regional Marine Plan Steering Committees, reflect a commitment towards integrated ocean management but at the same time confront the existing legal and jurisdictional framework. The development and implementation of *Australia's Oceans Policy* has been a pivotal turning point in marine policy making in Australia. It has signified a growing confidence in the administration of Commonwealth marine and offshore responsibilities and has emphasised the acceptance of, and the importance of, continual relationships and consultation with states, stakeholders and interest groups.

The Commonwealth's greatest challenge will be to achieve further policy and institutional development whilst adhering to its commitment outlined in *Australia's Oceans Policy* to administer minimal change to the legal and jurisdictional framework that has been established following a quarter of a century of offshore federalism. Although it is too soon to evaluate *Australia's Oceans Policy* and the *South East Regional Marine Plan*, the most significant goal for ocean institutions, key stakeholders and interest groups involved in policy implementation will be the continual support of integration across sectors and jurisdictions.

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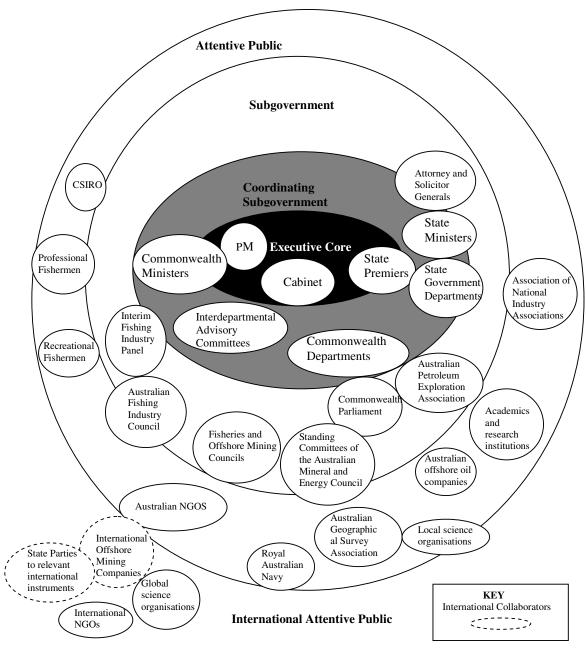


Figure 7.1 Australia's Oceans Policy Community During the Implementation of the Offshore Constitutional Settlement 1982 – 1983.

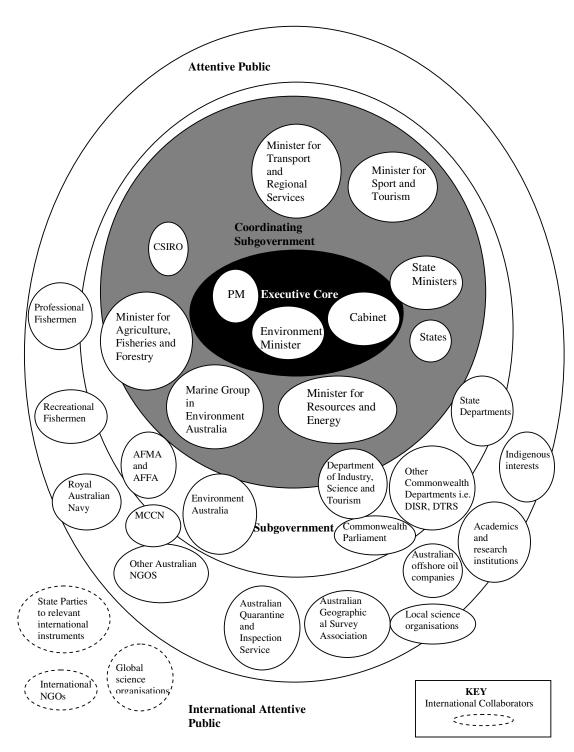


Figure 7.2 Australia's Oceans Policy Community During the Development of *Australia's Oceans Policy* 1997 - 1998.

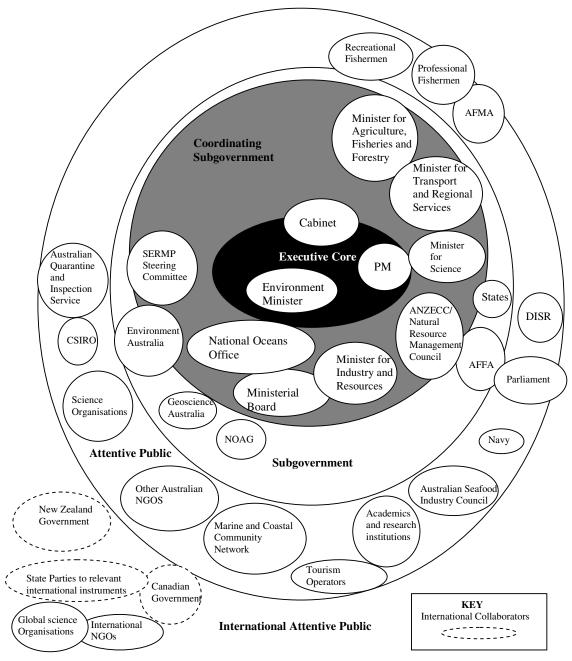


Figure 7.3 Australia's Oceans Policy Community During the Implementation of *Australia's Oceans Policy* 2001 - 2003.

Table 1.5 A Policy Transfer Framework

Continuum in		Who is involved in Transfer?	Transferred?	From Where			Degrees Of Transfer	Constraints On Transfer	How to Demonstrate Policy Transfer	How Transfer Leads to Policy Failure	
Voluntary	Mixtures	Coercive			Past	Within a Nation	Cross National				
Lesson Drawing (Perfect Rationality)	Lesson Drawing (Bounded Rationality)	Direct Imposition	Elected Officials	Policies (Goals) (Content) (instruments)	Internal	State Governments	International Organisations	Copying	Policy Complexity (Newspaper) (Magazine) (TV) (Radio)	Media	Uniformed Transfer
	International Pressures		Bureaucrats Civil Servants	Programs	Global	City Governments	Regional State Local Governments	Emulation	Past Policies	Reports	Incomplete Transfer
	(Image) (Consensus)										
	(Perceptions) Externalities	Pressure Groups	Institutions			Local Authorities		Mixtures	Structural Institutional	Conferences	Inappropriate Transfer
	Conditionality	Political Parties	Ideologies					Inspiration	Feasibility	Meetings/ Visits	
	(Loans) (Conditions attached to business activity)								(Ideology) (Cultural proximity) (Technology) (Economic) (Bureaucratic)	, 19.10	
	Obligations	Policy Entrepreneurs/ Experts	Attitudes/ Cultural Values						Language	Statements (written) (verbal)	
		Lapetto	Consultants Think Tanks Transnational Corporations Supranational Institutions	Negative Lessons			Past Relations			(verbai)	

Source: Dolowitz, D. and Marsh, D. "Learning from abroad: the role of policy transfer in contemporary policy making", *Governance: An International Journal of Policy and Administration* 13, no.1, January 2000: 9.



Table 1.6 The Characteristics of Policy Communities, Epistemic communities, Policy Transfer Networks and Change Networks

Dimension	A policy community (Pross; Homeshaw; Atkinson and Coleman)	A policy community (Marsh and Rhodes)	An epistemic community (Alder and Haas)	A policy transfer network (Evans and Davies)	A change network
Membership	I 1 C 1	37 1' '- 1 1		37 11 14 1 d	
Number of participants	Large number of people and groups who have an interest in a particular policy field and try to influence it	Very limited number, some groups consciously excluded	Limited, a shared set of casual and principled beliefs (analytic and normative)	Very limited, the system has bias against certain inputs, emphasis on bureaucratic and technocratic elites	Limited, the system has bias against inputs against change; a shared set of casual beliefs to facilitate change for that point in time
Type of interest	Economic and/or professional interests dominate	Economic and/or professional interests dominate	Natural and social scientists or individuals from any discipline or profession with authoritative claims to policy relevant knowledge which reside in both national and international organisations	Agents of policy transfer, affected politicians and bureaucrats	Agents with specific intentions of policy change; Encompasses a range of interests but with similar intentions for change
Integration Frequency of interaction	Different categories of actors (executive core, coordinating subgovernment, attentive public, international attentive public) have different frequencies of interaction.	Frequent, high quality, interaction of all groups on all matters related to policy issue	A continuous process of bargaining and negotiation takes place within and between epistemic communities	Within a set time scale, high quality, interaction of all groups on all matters related to the policy transfer	Within a set time scale, frequent, high quality, interaction of all groups on all matters related to policy change

Dimension	A policy community (Pross; Homeshaw; Atkinson and Coleman)	A policy community (Marsh and Rhodes)	An epistemic community (Alder and Haas)	A policy transfer network (Evans and Davies)	A change network	
Integration (cont.) Continuity	Membership, values, and outcomes persist over time	Membership, values, and outcomes persist over time	Membership and values persist over time as long as reputation survives	Ad hoc – action orientated networks with the specific intention of engineering policy change	Ad hoc – action orientated networks with the specific intention of engineering policy change	
All participants share basi values		All participants share basic values and accept the legitimacy of the outcome	All participants share a consensual knowledge base and a common policy enterprise	All participants share basic values	All participants share basic values	
Resources Distribution of resources (within a network)	All participants have resources; basic relationship is an exchange relationship	All participants have resources; basic relationship is an exchange relationship	All participants have knowledge resources; basic relationship is exchange relationship	All participants have resources; basic relationship is exchange relationship	All participants have resources; basic relationship is exchange relationship	
Distribution of resources (within participating organisations)	Hierarchical; leaders can deliver members	Hierarchical; leaders can deliver members	Policy makers are dependent on the intelligence gathering skills and knowledge resources of the epistemic community	Policy makers are dependent on the intelligence gathering skills and knowledge resources of the agent of transfer and the donor organisation	Policy makers are dependent on the intelligence gathering skills and knowledge resources of those initiating policy change	
Power	Power is concentrated in the executive core and coordinating subgovernment. Other categories also have limited power and one group can dominate on occasion.	There is a balance of power among members – although one group may dominate, it must be a positive sum game if community is to persist	The view of policy makers ultimately determines the influence of an epistemic community and their status of acceptance	The success of a policy transfer network rests on the ability of the agent of the transfer to satisfy the objective policy problem of the client, there must be a positive sum game if the network is to persist	Unequal powers among members of network. The success of the policy change network rests on the ability to achieve change. The power ultimately rests with the policy makers who accept, develop and implement the change.	

Source: Adapted from Evans, M. and Davies, J. "Understanding policy transfer: a multi-level, multidisciplinary perspective", *Public Administration* 77, no.2, 1999: 375.