

NATIONAL EFFORTS AT INTEGRATED COASTAL ZONE MANAGEMENT: THE CANADIAN, AUSTRALIAN AND NEW ZEALAND EXPERIENCES

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ABSTRACT

This paper outlines the basic principles of Integrated Coastal Zone Management (ICZM). It particularly examines the approaches adopted in Canada, Australia and New Zealand and compares the successes of the different approaches. The impact of the different constitutional structures, and the commensurate jurisdictional issues that arise are briefly examined. This paper demonstrates the important premise that a complex multi-sectoral approach is required to have any success with implementing a national strategy for preserving oceans, and the importance of following the principles of sustainable development as outlined in the various international environmental agreements and conventions.

I. INTRODUCTION

Integrated Coastal Zone Management (“ICZM”) has been recognized by international conventions, international institutions, and nations as the most effective way to prevent environmental degradation of coastal regions and to implement the principles of sustainable development. Despite a high level of international recognition, the principles of ICZM present challenges and make it difficult for national governments to create such programs. Integration, sustainable development and multi-sector management are principles that require legal structures fundamentally different from those that have existed previously. Furthermore, many nations run into jurisdictional issues that create difficulties in creating ICZM programs. This paper will examine the “top down” approaches national governments have taken in attempting to

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implement ICZM programs to meet their international commitments. In particular, it will examine New Zealand's *Resource Management Act*,¹ Australia's new ocean management policy and Canada's *Oceans Act*.² The main focus will be on the Canadian experience and the recent introduction of the Oceans Act. A comparative analysis of the various governmental legislative attempts to implement ICZM programs may provide valuable insight to aid the Canadian development of a national ICZM program.

II. INTEGRATED COASTAL ZONE MANAGEMENT – THE INTERNATIONAL LEGAL STRUCTURE

a. UNCLOS III

National responsibility for the development of ICZM programs stems from state responsibility and control over ocean areas at international law. The leading international document on ocean jurisdiction is the United Nations Law of the Sea Convention, signed in 1982. This convention defines state jurisdiction and control in four areas: territorial seas, contiguous zone, the exclusive economic zone (“EEZ”), and the continental shelf. The territorial sea and the contiguous zone extend from coastal baselines to 12 nautical miles and 23 nautical miles respectively.³ The EEZ gives states rights and responsibilities over living and non-living resources from baselines to the 200 nautical mile mark.⁴ The final area of state jurisdiction, the continental shelf, reaches from a minimum of 200 nautical miles to a maximum of 350 nautical miles from baselines depending on the length of the continental shelf.⁵ Unlike the EEZ, state rights in the continental shelf are limited to “sovereign rights for the purpose of exploring it and exploiting its natural resources.”⁶

¹ S.N.Z. 1991 No. 9. [hereinafter *RMA*].

² S.C. 1996, c.o-2.4 [hereinafter *Oceans Act*].

³ *United Nations Law of the Sea Convention*, 12 December 1982; in force on 16 November 1994, online: United Nations Oceans and Law Homepage <<http://www.un.org/Depts/los/index.htm>> (date accessed: 14 November 2000) [hereinafter *UNCLOS III*].

⁴ *Ibid.*, art. 56-57.

⁵ *Ibid.*, art. 76.

⁶ *Ibid.*, art. 77(1).

Part XII of the convention spells out state responsibility for the protection and the preservation of the marine environment. It includes sections on global and regional cooperation, monitoring and environmental assessment, and enforcement. Articles 192 and 193 set out the basic duty of a state to protect the environment and exploit resources “in accordance with their duty to protect and preserve the marine environment.”⁷ Article 235 holds a state liable for failing to implement environmental preservation and protection schemes.

Although UNCLOS III made no mention of integrated management, Edward Miles feels that the concept was implicit in the agreement. He argues that “a shift to integrated ocean management, embracing the coastal ocean as well as EEZs, is inherent in the regime design of the 1982 Convention but that it was not generally realized and accepted at the time.”⁸ Sections of the *Act* support his analysis. In Part V of UNCLOS III, section 56 clearly established state responsibility for the management of marine resources in the EEZ:

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

...

(ii) marine scientific research

(iii) the protection and preservation of the marine environment⁹

Thus if nations wish to claim the EEZ they will need to acknowledge their acceptance of these responsibilities. Miles comments:

By doing away with the patchwork quilt of limited, special purpose coastal State Jurisdictions beyond the territorial Sea and replacing it with comprehensive authority...the 1982 Convention for the first time in history, gave to coastal States the opportunity to treat the entire range of activities occurring within the EEZ as an integrated whole.¹⁰

⁷ *Ibid*, art. 192-193.

⁸ Edward Miles, “The Approaches of UNCLOS III & Agenda 21 – A Synthesis” in M. Kusuma-Atmadja, T. Mensah & B. Oxman, eds., *Sustainable Development and Preservation of the Oceans: The Challenges of UNCLOS and Agenda 21* (Honolulu: Law of the Sea Institute, 1996) at 18.

⁹ *UNCLOS*, *supra* note 3.

¹⁰ Miles, *supra* note 8 at 20.

b. The emergence of ICZM at International Law:

ICZM has received international attention as one of the best ways to meet the goal of sustainable development in the marine environment.¹¹ Sustainable development is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹² The concept encompasses principles of equity between generations, amongst members of society and amongst nations and peoples in the international community.¹³ The goal of sustainable development is the responsible and equitable use of resources without causing environmental degradation.

The international community has accepted the importance of ICZM at the United Nations Convention on Environmental and Development (“UNCED”) in 1992. The conference released five important documents:

- a Framework Convention on Climate Change
- a Framework Convention on Biological Diversity
- Agenda 21 – a non-binding statement outlining the international commitment to sustainable development
- The Rio Declaration on the Environment and Development
- A non-binding statement of forestry principles

These documents explain that ICZM is essential to implementing sustainable development and environmental protection in coastal regions. Agenda 21 is the most important document in relation to ICZM. It is a non-binding document designed to outline a global position on sustainable development. The first section of chapter 17 explains the need for ICZM, the second considers the need to identify and research coastal processes, and the third the need to allow groups access to coastal areas. In the first part, article 17.5 states the objectives of Agenda 21:

¹¹ See John Clark, “Coastal Zone Management for the New Century” (1997) 37 *Ocean and Coastal Management* 191 at 195-8. In this article, the author explains the problems ICZM attempts to address: resource depletion, pollution, biodiversity depletion, natural hazards, sea level rise, eroding shorelines, land use impacts on coastal area, depletion and destruction of hinterland areas, landscape preservation and resource conflict.

¹² World Commission on Environment & Development, *Our Common Future* (Oxford : Oxford University Press, 1987).

¹³ *Ibid*, and see B. Cicin-Sain & Knecht, *Integrated Coastal and Ocean Management: Concepts and Practices* (Washington D.C.: Island Press, 1998) at 89.

Coastal States commit themselves to integrated management and sustainable development of coastal areas and the marine environment under their national jurisdictions. To this end it is necessary to, *inter alia*:

- (a) Provide for an integrated policy and decision making process, including all involved sectors, to promote compatibility and a balance of uses
- (b) Identify existing and projected uses of coastal areas and their interactions
- (c) Concentrate on well defined issues concerning coastal management
- (d) Apply preventive and precautionary approaches in project planning and implements, including prior assessment and systematic observation of the impacts of major projects
- (e) Promote the development and application of methods, such as national resource and environmental accounting, that reflect changes in value resulting from uses of coastal and marine areas, including pollution, marine erosion, loss of resources and habitat destruction
- (f) Provide access, as far as possible, for concerned individuals, groups and organizations to relevant information and opportunities for consultation and participation in planning and decision making at appropriate levels.¹⁴

These six statements set a framework for nations to follow in development of ICZM programs.

Since UNCED, many other conventions and treaties have recognized the importance of ICZM. At the world coast conference in 1993, the World Bank issued the Noordwijk guidelines endorsing ICZM:

ICZM is a process of governance and consists of the legal and institutional framework necessary to ensure that development and management plans for coastal zone are integrated with environmental (including social) goals and are made with the participation of those affected.¹⁵

¹⁴ *Report of the United Nations Conference on Environment and Development* (Rio de Janeiro, 3–14 June 1992); Chapter 17, “Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of Their Living Resources,” UN Doc. A/CONF.151/26, vol. 11, 13 August 1992 [hereinafter *Agenda 21*].

¹⁵ World Bank, *Noordwijk Guidelines for Integrated Coastal Zone Management* (Noordwijk: World Coast Conference, 1993). [hereinafter *Noordwijk Guidelines*].

Other international treaties and conventions have also endorsed ICZM such as the Programme of Action for the Sustainable Development of Small Island Developing States, 1994; Global Programme of Action on the protection of the Marine Environment from Land-Based Activities, 1995; International Coral Reef Initiative, 1995; and The Jakarta Mandate on the Protection of Biological Diversity in Marine and Coastal Areas, 1995.¹⁶ To understand the concepts behind ICZM, it is useful to break down the term and consider the meaning of the three key components and how they interact: Integration, Coastal Zone and Management.

i. Integration:

The two main areas of conflict have created the call for an integrated approach to marine management. First, governments have traditionally tended to manage marine resources in coastal areas in a sectoral manner (i.e. managed fisheries, tourism, and offshore mining under different legal regimes). This approach has been criticized as creating conflicting goals and at other times combining to worsen environmental impact. Second, international, national and regional jurisdiction issues in the coastal area have negatively impacted the environmental areas of the coastal zone. The solution is to search for an integrated approach to marine management.

The term integration refers to the need to move to a holistic, multi-sectoral and multi-governmental approach to coastal and ocean management. The concept of integration is central to ICZM as Cicin-Sain and Knecht explain:

first and foremost, the process is designed to overcome fragmentation inherent in both the sectoral management approach and the splits in jurisdiction among the levels of government at the land-water interface. This is done by ensuring that the decisions of all sectors (e.g. fisheries, oil and gas production, water quality) and all levels of government are harmonized and consistent with coastal policies of the nation in question.¹⁷

¹⁶ For a complete discussion on these documents, see R. Beckman & Brady Coleman, "Integrated Coastal Management: The Role of Law and Lawyers" (1999) 14 *The International Journal of Marine and Coastal Law* 491.

¹⁷ Cicin-Sain & Knecht, *supra* note 13 at 38. See also J. Clark, *Coastal Zone Management Handbook* (New York: CRC Press, 1996) at 31.

They further explain that the term refers to five different types of integration:

1. *Intersectoral integration*: integration among different sectors involves both “horizontal” integration among different coastal and marine sectors, and integration between coastal and marine sectors and land-based sectors. Inter-sectoral integration addresses conflicts among government agencies.
2. *Intergovernmental integration*, or integration among levels of government.
3. *Spatial integration*, or integration between the land and ocean sides of the coastal zone.
4. *Science-management integrations*, or integration among the different disciplines important in coastal and ocean management.
5. *International integration*.¹⁸

ICZM makes it clear that a national integrated management program needs to be able to incorporate the interests of all levels of government. As the Noordwijk guidelines explain:

From an economic development perspective the ultimate objective of the ICZM program is that it will become an integral part of economic development plans both at a national level and local level. Achieving this objective will require the support of policy makers and planning and [front] line agency officials.¹⁹

This means that the approach cannot be a simple dictation of federal policy forced upon provincial and municipal governments. Rather an integrated management approach seeks to involve all levels of government and governmental agencies. Furthermore, the management approach is not limited to government but includes all persons and groups with an interest in the coastal zone. Such an approach must keep in mind the twin goals of development and environmental protection.²⁰

The broad nature implied by the term integration makes it difficult for the federal government to develop policies and legislation that meets these goals. Integration can often be controversial since it seeks to regulate volatile and conflicting industries (for example fisheries and

¹⁸ Cicin-Sain & Knecht, *ibid.* at 45.

¹⁹ *Noordwijk Guidelines*, *supra* note 15 at 13.

²⁰ See B. Cicin-Sain, “Sustainable Development and Integrated Coastal Management” (1993) 21 *Ocean and Coastal Management* 11.

mining). This is increasingly difficult in federal nations where responsibilities for industry are divided between national and state governments.

ii. Coastal Zone:

The coastal zone refers to the area where the land and the water interface. Cicin-Sain writes, “in terms of areas, in my view, integrated coastal management must include both coastal lands and coastal waters because of the important reciprocal processes and activities in these two areas.”²¹ The Noordwijk guidelines explain:

For practical planning purposes, the coastal zone is a *special area*, endowed with special characteristics, whose boundaries are often determined by the specific problems to be tackled. Its characteristics are:

- It is a dynamic area with frequently changing biological, chemical, and geographic attributes.
- It includes highly productive and biologically diverse ecosystems that offer crucial nursery habitats for many marine species.
- Coastal zone features such as coral reefs, mangrove forests, and beach and dune systems serve as critical natural defenses against storms, flooding, and erosion.
- Coastal ecosystems may act to moderate the impacts of pollution originating from land (or for example, wetlands absorbing excess nutrients, sediments, human waste).
- The coast attracts vast human settlements due to its proximity to ocean’s living and non-living resources, as well as marine transportation.²²

It is important to ICZM governance of the coastal zone that the shore and the water are managed as one entity. The idea is to manage the coastal area in a manner that takes into account environmental phenomena and human interaction with coastal processes.

From a legal perspective, definition of the coastal zone is a major issue. For many marine managers, the lack of a clear legal definition of the coastal zone has been frustrating:

One of the most unfortunate and debilitating issues in the early development of ICZM was the definition of the coastal zone. A lack of agreement gave sceptics the opportunity to conclude they couldn’t

²¹ *Ibid.* at 30 – 31.

²² *Noordwijk Guidelines*, *supra* note 15 at 3.

proceed until a satisfactory definition was achieved. From both functional and scientific viewpoints, what constitutes an ideal definition depends, of course, upon the purpose at hand.²³

However, the definition remains extremely important. Beckman and Coleman explain:

To formulate an [ICZM] plan, the “coastal zone” must be legally defined. However, defining the coastal zone often proves surprisingly challenging. Non-lawyers, or even lawyers untrained in regulatory drafting, may fail to see the significant implications of defining the coastal zone in different ways. Indeed, how the coastal zone is legally defined will play a fundamental role in the structure and function of the entire ICM plan.²⁴

iii. Management:

The most important part in an ICZM program is the need for some form of a governance structure. The importance of integration in the management is paramount. National “top-down” legislation that avoids interacting with coastal user groups creates unnecessary conflict and does not achieve the goals of ICZM. Cicin-Sain and Knecht state that “integrated coastal management involves (1) a set of substantive and procedural principles; (2) a management strategy that emphasizes adaptation and feedback; and (3) the use of particular approaches, methods, and techniques.”²⁵ The Noordwijk guidelines explain that the principles for an ICZM program are based on environmental principles found in Agenda 21. They include:

- the precautionary approach
- polluter pays doctrine
- proper resource accounting
- trans-boundary responsibility
- inter-generational equity²⁶

²³ L. Hildebrand & M. Haward, “Integrated Coastal Zone Management” in L. Kriwoken, M. Haward, D. Vanderswaag & B. Davies, eds., *Ocean Law and Policy in the Post-UNCED Era: Australian and Canadian Perspectives* (London: Kluwer Law International, 1996) 141 at 162-64.

²⁴ Beckman & Coleman, *supra* note 16 at 502.

²⁵ Cicin-Sain & Knecht, *supra* note 13 at 52.

²⁶ Derived from list in *Noordwijk Guidelines*, *supra* note 15 at 6. For further definitions, see *Agenda 21*, *supra* note 17.

Other principles considered by Cicin-Sain and Knecht, among others, include the principles of interrelationship and integration, the right to develop, and principles related to the biophysical nature of the coastal zone.²⁷

Management strategy and the techniques employed are essential to an understanding of the type of management ICZM programs envision. Many models have been suggested for developing a management strategy. Overall the Coastal Area Management and Planning Network describe an ICZM management plan as follows:

1. Dynamic programme that usually requires continual updating and amendments. ICZM is not a one-time program.
2. It has a geographical boundary that defines a space which extends from the ocean environment across transitional shore environments to a specified inland extent.
3. There is a management arrangement to establish the policies and processes for making allocation decisions.
4. There is a management arrangement that uses one or more strategies to rationalize and systematize for making allocation decisions.
5. The management strategies selected are based on a systems perspective which recognizes the associations between coastal resources and processes. The systems perspective usually requires that a multi-sectoral approach be used in the design and implementation of the management strategy.²⁸

To achieve these goals, a management strategy must have mechanisms for public discussion, strong communication devices and have an effective administrative structure. Furthermore, an ICZM program will need to understand the physical processes of the coastal area and how resource use interacts with these processes. This requires a scientific understanding and analysis of the coastal zone and the use of scientific techniques to continually monitor the effectiveness of programs.²⁹

²⁷ Cicin-Sain & Knecht, *supra* note 13 at 53-55.

²⁸ L. Hildebrand & E. Norrena, "Approaches and Progress Toward Effective Integrated Coastal Zone Management" (1992) 25 *Marine Pollution Bulletin* at 94-95. [hereinafter *Hildebrand & Norrena*]. See also J. Sorenson, "The International Proliferation of Integrated Coastal Zone Management Efforts," (1993) 21 *Ocean and Coastal Management* at 47-8.

²⁹ See Cicin-Sain & Knecht, *supra* note 13 at 171-95.

Clark, Cicin-Sain and Knecht stress that a management strategy must recognize the importance of integration, sensitivity to scientific and environmental concerns, funding, public input, enforcement and feedback. To achieve these goals ICZM programs must have a strong administrative framework and be able to overcome legal barriers such as jurisdictional issues. National government efforts are thus essential in order to implement integrated management schemes since without a national program an effective integrated management program cannot be developed.

III. NATIONAL ICZM EFFORTS IN CANADA, AUSTRALIA AND NEW ZEALAND

a. Canada

Canada's jurisdiction for coastal regions is split between the federal provincial governments. Coupled with lack of public support, this has proven the main problem in implementing ICZM programs in Canada.³⁰ Another issue is that three different oceans surround Canada: the Pacific in the west, the Atlantic in the east and the Arctic in the north. This has led some to question whether a national ICZM program is feasible.³¹ However, a national coastal program that allows the development of regional coastal plans on an ecosystems basis is something that should be explored in Canada. Given the legal structure, the federal government needs to take a lead role and cooperate with provincial governments in generating an ICZM program.

Historically, there have been limited attempts to implement ICZM programs at the national level. One of the only attempts occurred in 1978 in Victoria, where the Canadian Council of Resource and Environment Ministers met to discuss the possibility of creating a national coastal zone program. The conference recognized the need to protect coastal areas and produced a set of guiding principles called the Victoria

³⁰ See Hildebrand & Haward, *supra* note 23 at 156. Here the authors hypothesize that public apathy is due to population demographics. The concentration of people in central Canada, who have no access to the coastline, has kept the development of an ICZM program off the national agenda.

³¹ *Ibid.* at 155.

Principles. In many respects, the Victoria Principles incorporate the fundamental tenets of ICZM, though they predate the development of ICZM as a concept at international law. They signify the importance of the shoreline, asking that:

all levels of government recognize the critical environmental, economic, and social importance of shore areas and actively promote the sensitive and orderly development of shores and shore resources in the long term.³²

Furthermore, the principles call for a “cooperative approach to management”³³ involving all levels of government, industry, and members of the public.³⁴ The Victoria Principles and the national symposium led to the creation of the Federal Shore Zone Program. The goal of the program was to

[d]evelop and implement policies to ensure coordination of federal activities, and to participate with provinces in the planning of shore zone areas where significant federal responsibilities were involved.

However, within three years the program ran into funding problems and was abandoned by the federal government.

After the failure of the federal shore program, the federal government virtually abandoned the attempt to create a national ICZM program, with the exception of some localized coastal management plans.³⁵ It was not until the introduction of the *Oceans Act* in 1997 that the development and implementation of a national ICZM program in Canada once again became a possibility. The *Act* came into force in January 1997 just prior to the international year of the ocean. The preamble recognizes the importance of Canada’s oceans and makes reference to the precautionary approach and the principles of sustainable development.³⁶ Furthermore, it confirms Canada’s “role as a world leader in oceans and marine

³² Meeting of the Canadian Council of Resource and Environmental Ministers (CCREM), *Shore Management Symposium Proceedings*, (Victoria 1978) [hereinafter the *Victoria Principles*].

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Programs such as the Atlantic Coastal Action Program [ACAP] and the Fraser River Estuary Management Program are evidence of community based ICZM programs. See Hildebrand & Haward, *supra* note 23 at 158 – 62.

³⁶ *Oceans Act*, *supra* note 2 at preamble.

resource management”³⁷ and states Canada’s commitment to integrated ocean management.³⁸

Part II of the *Oceans Act*, the *Ocean Management Strategy* (“OMS”), is the most pertinent in relation to the development of a national ICZM strategy. Section 29 mandates the Minister in consultation with other federal, provincial, territorial, affected aboriginal bodies, and coastal communities, to establish a national strategy for the management of federal waters. Section 31 of the *Act* gives the federal Department of Fisheries and Oceans (“DFO”) the authority to establish an integrated management plan in the “coastal waters and marine waters that form part of Canada.”³⁹

Section 30 explains that a national strategy will be based on the principles of sustainable development, the integrated management of Canada’s coastal waters and the precautionary approach.⁴⁰ Unfortunately, after enunciating these broad principles, the *Oceans Act* creates no supporting administrative structure in the development of an ICZM. Furthermore, there are no clear definitions of the terms ‘integrated management,’ ‘sustainable development,’ or even ‘ocean management strategy.’ Given the difficulty of the process of integration and the need to bring all stakeholders to the table, it is difficult to see how DFO will be able to develop an Ocean Management Strategy.

The *Act* also suffers because sections 29 – 33 provide almost no clear legal obligation on the minister responsible to develop an ICZM program. The sections create a combination of directive “shall” and discretionary “may” obligations on the Minister. However, the use of the directive language “shall” in sections is always used in a permissive manner. As Chao explains,

[F]irst, the mandatory word, shall, is used only with respect to the leading and facilitating of the development and implementation of the OMS. Secondly, the provision only provides that the Minister is to “collaborate” with these other governments, bodies and individuals, rather than requiring the Minister to “integrate” or to “reach a consensus” with these parties.⁴¹

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*, s.31.

⁴⁰ *Ibid.*, s.30.

⁴¹ G. Chao, *The Emergence of Integrated Coastal and Ocean Management in Canada’s Ocean Act* (August 1999) at 64-65. [unpublished, archived at Sir James Dunn Library at Dalhousie Law School].

Section 33 requires the Minister to cooperate with other ministers, boards, and agencies of the federal government and requires the Minister to gather information.⁴² In contrast, the Minister “may” make agreements with other agencies, “may” make grants and contributions, and “may” make recoverable expenditures.⁴³ Thus the *Act* does not mandate the production of a national OMS but merely sets out the principles for the production of an OMS if it is developed.

A final problem is that the *Act* fails to consider jurisdictional issues. It is clear that the development of an OMS is restricted to the waters that belong to Canada. In several places, the *Act* uses the phrase:

estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law.⁴⁴

This clearly excludes provincial waters and fails to create a strategy that incorporates the land and water sides of the coastal region. Despite the recognition of the need to talk with provincial governments there is no mechanism for overcoming this issue.

Due to these problems, a national OMS has been slow to develop, as with all law where constitutional jurisdictions overlap. However, in the wake of the *Oceans Act* mandate, DFO has been working to implement integrated management on a regional basis. These regional efforts are focusing on the development of localized ICZM planning processes. Off the coast of Nova Scotia, DFO has been working on the Eastern Scotian Shelf Integrated Management Project (“ESSIM”). The project focuses on the offshore marine environment but one of its goals is the establishment of some form of institutional arrangement to aid in the development of integrated management plans. As part of the development of this project, an overview and use audit has been conducted for ocean use activities in the area, including information from fisheries, shipping, and the oil and gas industry. The audit has largely been based on government department data, and one important challenge for the project is to involve the private sector in the management process. Glen Herbert, DFO Maritimes Region, explains:

due to the competitive nature of some marine industries, it is difficult to get access to industry data and sector plans. For example, the fishing

⁴² *Oceans Act*, *supra* note 2, s.33.

⁴³ *Ibid.*, s.33.

⁴⁴ *Ibid.*, s.29, 31.

and oil and gas sectors are highly competitive and certain parts of how they conduct their business are considered to be confidential.⁴⁵

In addition to problems in accessing information, the challenge of engaging the private sector involves varying levels of mistrust of government programs, as well as varying levels of willingness and capacity to become involved in a new integrated, multi-stakeholder planning process.⁴⁶ Herbert explains that

although the private sector is generally receptive to the idea of more integrated and inclusive planning and management, they need to see a commitment on the part of government – federally and provincially – to get its act together before they can commit fully to an integrated management process.⁴⁷

Another issue for ESSIM is attempting to integrate both federal and provincial government departments. For ESSIM to meet its objectives, government departments need to work together on a regional and sub-regional basis. This underscores the requirement for a national policy framework for implementing the *Oceans Act*. Overcoming these challenges will involve the creation of administrative structures and ICZM goals that are clear and comprehensive. Regardless of the outcome, the ESSIM project will serve as a good example of the practical problems of implementing the *Oceans Act* and may establish a foundation to aid in the development of a national ICZM program.

On the Pacific Coast, DFO is working in coordination with the provincial government to implement ICZM programs. The project is based on British Columbia's coastal policy and attempts to overcome jurisdictional issues through intergovernmental cooperation. The province has split the coast into five main regions to develop coastal management plans. The policy, called the Land and Coastal Resource Management Plan, is a public process inviting the cooperation of local governments, First Nations, and other interested stakeholders.

Provincial and federal government agencies are working with each other developing programs which span the land-water interface. This process may demonstrate how a national ICZM strategy can be devel-

⁴⁵ Interview with Glen Herbert, Department of Fisheries and Oceans, Maritimes Region, *Ocean Act* Coordination Office (14 December 2000).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

oped and, if successful, may provide valuable insight on how federal and provincial departments can work in tandem.

b. Australia

Like Canada, jurisdiction in the coastal zone is split between the federal and state governments. The federal or Commonwealth government has jurisdiction over much of the offshore, while state governments control a small territorial sea and the landward side of the coast. In the nineties, Australia exerted maritime claims to the full extent possible under international law. The offshore jurisdiction includes a continental shelf, an EEZ, a territorial sea and contiguous zones.

Like Canada, Australia was a major voice in the call for protection of the marine environment. However, unlike Canada, Australia has followed a non-legislative approach to ICZM despite calls by several government reports to issue a formal legislative document on Coastal Zone management.⁴⁸ The federal government has generated several studies and programs that have led to the implementation of a formal national ocean policy. Four of the most important are: the Australian House of Representatives Standing Committee on the Environment, Resources and Arts report on the coastal zone; the Resources Assessment Commission report on coastal resource management; the National Strategy for Ecologically Sustainable Development; and the Ocean Rescue 2000 program.

In the late eighties, prior to UNCED, the Australian House of Representatives Standing Committee on the Environment, Resources and Arts concluded a report on the coastal zone entitled *The Injured Coastline*. The report highlighted environmental problems and “recommended, *inter alia*, that the Commonwealth develop a national coastal management strategy in collaboration with state territorial governments.”⁴⁹ The report focused on environmental issues and called for the creation of a national coastal strategy. In response to the report, the government announced funding for the creation of an integrated coastal

⁴⁸ For a table summary of recommendations of these reports, see Hildebrand & Haward, *supra* note 23 at 146.

⁴⁹ M. Haward, “Institutional Design and Policy Making ‘Down Under’: Developments in Australia and New Zealand Coastal Management” (1995) 26:2 *Ocean and Coastal Management* at 9.

management program to be completed by the Resource Assessment Commission.⁵⁰ The Commission was charged with making an assessment of the marine environment and directed to conduct a Coastal Zone inquiry. It recommended the creation of a National Coastal Action Program, which would be anchored through the creation of a Coastal Resources Management Act.

Both the federal government and the state government responded negatively to the report, feeling it failed to achieve real intergovernmental integration. Thus, the recommendations were not fully adopted by the federal government. In particular, the notion of creating a Coastal Zone Management Act was rejected. However, by 1995 the federal government announced the creation of a National Coastal Action Plan in the document *Living on the Coast*. The plan's "principle objectives were to move towards sustainable resource use, improve coastal decision processes and ensure public involvement and to conserve and manage areas and features of ecologically, cultural, historical, landscape and scientific significance."⁵¹ Included in the plan was a Coastcare program to be monitored by the Department of the Environment and the creation of a National Coastal Advisory Committee.⁵²

The Ecologically Sustainable Development ("ESD") process developed in response to the World Commission *Our Common Future* report on sustainable development. Initiated in 1989, it created nine working groups to aid the federal government in developing sustainable development policies in environmental and resource management. The ESD issued a report with input from each of the groups that made recommendations designed to improve management on the basis of sustainable development. Included in the report was the recommendation of a subcommittee on coastal zone management criticizing the lack of integration between sectors and a suggestion for a stronger commitment to ICZM.

The Ocean Rescue 2000 program began in 1991 and was designed to create a national marine environmental conservation program. It has led

⁵⁰ *Ibid.* at 95.

⁵¹ B. Davis, "National Responses to UNCED Outcomes: Australia," in L. Kriwoken, M. Haward, D. Vanderzaag & B. Davis, eds., *Ocean Law and Policy in the Post-UNCED Era: Australian and Canadian Perspectives* (London: Kluwer Law International, 1996) 25 at 35-36.

⁵² *Ibid.* at 36.

to three important developments in the creation of a formal oceans policy. First, the program initiated the State of the Marine Environment Report. This report collected technical and scientific data on the Australian marine environment. Second, Ocean Rescue 2000 led to the creation of the National Marine Conservation Plan based on the technical data compiled under the report. Third, the program created a Marine and Coastal Community Network.⁵³ These developments have paved the way for the formal creation of a comprehensive national Australian ocean policy.

Australia announced the creation of a comprehensive ocean policy ("AOP") in 1998 during the International Year of the Ocean. At the core of the policy was to be an ecosystem-based management program founded on the principles of sustainable development and integrated management. The Minister of the Environment would be responsible for the development of the policy, which would be based on extensive public consultation with stakeholders and members of the public.⁵⁴ The resulting policy consists of two volumes. The first, entitled *Australia's Ocean Policy: Caring, Understanding, Using Wisely*, establishes Australia's commitment to sustainable development and integrated ocean management. It also describes the implementation process for the policy, the administrative framework and sets timetables for the establishment of policy. The second volume, *Australia's Ocean Policy: Specific Sectoral Measures*, is more a discussion paper about issues in the marine environment and how the policy will impact specific sectors.

The most incredible feature of the AOP is its loose legal arrangement. The policy clearly states that it is binding on the federal government but provides no formal legal structure. Rather the entire administrative structure is based upon policy. Furthermore, the AOP does not bind the states. The Commonwealth is to seek the cooperation of the states through Memorandums of Understanding. Therefore, until the cooperation of the states is achieved, the AOP applies only to the waters outside the three-mile state territorial sea.

⁵³ See Haward, *supra* note 49 at 100.

⁵⁴ See G. Wescott, "The Development and Initial Implementation of Australia's 'Integrated and Comprehensive' Oceans Policy," (2000) 43 *Ocean & Coastal Management*, 853 at 863-65 for a discussion of the public consultation process and a list of public concerns.

The AOP creates a vast administrative framework that has as its goal the sustainable development and integrated resource management of Australia's oceans. The program creates four new administrative bodies. First, it creates the National Oceans Ministerial Board comprised of the federal ministers of the environment, industry, resources, fisheries, science, tourism and shipping. The goal of the board is to formally implement the policy and seek coordination between sectors and governments.⁵⁵ Second, it creates a National Oceans Advisory Group comprised of non-governmental stakeholders in the marine environment. Third, the policy creates the Regional Marine Plan Steering Committees of government and non-governmental stakeholders who will be appointed to aid in the preparation of the Regional Marine Plans. Finally, the policy creates the National Oceans Office "which will provide secretarial and technical support and programme delivery for oceans policy initiatives."⁵⁶ At the head of the framework are Regional Marine Plans, "based upon large marine ecosystems [which] will integrate sectoral, commercial interests and conservation requirements."⁵⁷ Boundaries for the Regional Areas are to be determined by the National Oceans Office.

The real test for the AOP is twofold: first, whether the process can be implemented and second, whether it will be able to sustain a legal challenge. In terms of implementation, the Australian government has created the four bodies described in the AOP. Furthermore, the Commonwealth has announced that the first Regional Plan will be completed off the south shore of Australia. It will be designated the "South East Marine Area." The Commonwealth has still not been able to complete the Memorandum of Understanding with state governments; thus, the plans will be limited at this point to the area outside the state's three mile territorial sea. In relation to the legal issues, the AOP relies heavily upon the cooperation of the private sector. From an administrative law perspective, absent a strong legislative framework it is questionable that the Regional Plans will sustain a court challenge.

⁵⁵ Commonwealth of Australia, *Australia's Oceans Policy* (Canberra: Environment Australia, 1998) at 10.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

c. New Zealand

Due to its constitutional structure, New Zealand has created one of the most comprehensive legislated ICZM programs in the world. Unlike Canada or Australia, New Zealand has a unitary government structure with no jurisdictional issues. It is also structured constitutionally like the United Kingdom with no formal constitutional document. The *Resource Management Act* and the *Local Government Act*⁵⁸ establish the statutory framework for coastal policy in New Zealand. The two pieces of legislation complement and support each other. These *Acts* arose out of a period of reform in New Zealand after the collapse of the economy in the 1980s. Cocklin and Furusuth explain:

[d]uring the late 1980s, New Zealand underwent a period of dramatic economic, social and administrative restructuring. Among the most fundamental reforms was the establishment of sustainable management as the guiding principle for decisions affecting the allocation and use of natural resources and the maintenance of environmental quality.⁵⁹

Both *Acts* were in place before the completion of UNCED and thus much of the development of New Zealand coastal policy was in place prior to Agenda 21.

The *Local Government Act* divides New Zealand into regional and territorial authorities based on water catchment areas.⁶⁰ The idea was to manage resources in an environmentally sound process.

The *RMA* establishes one of the most extensive resource management regimes in the world. The purpose of the *RMA* is stated in section 5 as the need to promote sustainable development.⁶¹ Section 6 lists matters of 'national importance' including:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development.⁶²

⁵⁸ S.N.Z. 1974, no.66.

⁵⁹ Owen Furuseth & C. Cocklin, "An Institutional Framework for Sustainable Resource Management: The New Zealand Model" (1995) 35 *Nat. Resources J.* 243.

⁶⁰ *Ibid.*

⁶¹ *RMA*, *supra* note 1, s.5.

⁶² *Ibid.*, s.6.

The Ministry of Conservation describes the *Act* as follows:

This act is very different from previous environmental legislation in New Zealand, and the vast majority of the environmental legislation throughout the world, because:

- it legislates for land, air and water resources under one overarching Act. Elsewhere, each major resource is normally legislated for separately.
- it assumes that local communities are the best judges of their own environmental problems, and how to go about dealing with them. Most countries have more central government control.

The act is “effects based”: that is, it is the environmental effects of your proposed activity that decides whether or not a particular activity can go ahead. Overseas legislation often sets hard and fast rules over what activities you can and can’t do.⁶³

The implementation of the administrative provisions of the *RMA* is shared between the Minister of Conservation and the Ministry of the Environment.⁶⁴ The *RMA* mandates that the Ministry of Conservation coordinate national, regional and territorial bodies in resource management. The Ministry of the Environment is given responsibility to give advice on environmental issues. The *RMA* requires the national and local government to prepare policy statements and plans for resource administration. As Haward explains, the *RMA* “established a four tier administrative regime; national policy statements, regional policy statements, regional plans and district plans.”⁶⁵ This structure ensures that all resource development is managed and controlled by a central process while maintaining a high level of local control over decision making.

Under section 57 of the *RMA*, the Minister of Conversation is required to issue a national coastal policy statement in accordance with

⁶³ Ministry of the Environment, New Zealand, “Introduction to the Resource Management Act,” online: Ministry of the Environment <<http://mfe.govt.nz/management/rma/rmaintro.htm>> (date accessed: 12 December 2000).

⁶⁴ Ministry of the Environment, New Zealand, “The Resource Management Act: an overview,” online: Ministry of the Environment <<http://mfe.govt.nz/management/rma/rma11.htm>> (date accessed: 12 December 2000) [Hereinafter *RMA Overview*].

⁶⁵ M. Haward, “Recent Developments and Announcements: Ocean and Coastal Zone Management in New Zealand and Australia: Current Initiatives” (1993) 19:3 *Ocean and Coastal Management* 292 at 297.

the broad principles of the *RMA*.⁶⁶ This was released in 1994. It is a very comprehensive document that includes national priorities for the preservation of the coastal environment, the implementation of New Zealand's international obligations impacting the coastal environment, and the protection of the characteristics of the coastal environment of special value to the *tangata whenua* ("Maori").⁶⁷

The policy statement contains clear instructions to the Ministry of Conservation and regional authorities to establish plans in accordance with the statement. Haward explains,

[t]he statement makes clear and unequivocal reference to the level of direction to and independence of regional and/or district Authorities. Two levels of directions are given in the National Policy Statement. Where a provision involves the term *shall*, the Regional and/or District Plan, and relevant authorities must address this issue to a level and in a manner which is appropriate to that region or district. Where a provision involves the term *should*, Regional or District Plans must address the issue if it is appropriate in that region or district.⁶⁸

This arrangement is similar to the U.S. framework in the *Coastal Zone Management Act* and "enhances the opportunities for integrated, rather than sectoral, management through the mandatory requirement that the hierarchy of coastal policy plans are consistent with the national policy statement."⁶⁹

The *RMA* requires to regional and district authorities to develop local policies and plans for resource management in combination with the national Coastal Policy Statement. This process distinguishes it from the Australian experience by legally requiring local authorities to implement policy statements. The *Act* sets out clear guidelines that must be followed in the development of a regional policy statement. Regional and Territorial authorities must comply with these provisions and implement policies and plans. In addition, the Ministry of Conservation has published guidelines for regional policy statements, regional plans, and district plans in relation to coastal areas. Like the national policy state-

⁶⁶ S. Davidson, "Current Legal Developments: New Zealand: New Zealand Coastal Policy Statement" (1995) 10 *Int'l J. of Marine and Coastal L.* at 431 [hereinafter *Coastal Policy Statement*].

⁶⁷ *Ibid.* at 432.

⁶⁸ Haward, *supra* note 49 at 107.

⁶⁹ *Ibid.* at 108.

ment, regional policies and plans provide important guidelines that aid in the implementation of the *RMA* and the principles of sustainable development and ICZM.⁷⁰

The *RMA* takes this process a step further by creating a formal regulatory and administrative structure for resource management. The *RMA* requires that activities affecting the marine environment be approved through a “formal consent process.”⁷¹ The Ministry of Conservation and national, regional, and territorial bodies are responsible for establishing the consent process under section 88 of the *RMA*. Applicants are advised to follow the guidelines in their own particular region and territory, though the Act sets out a clear administrative framework. The final arbiter in the consent process is the Environmental Court, which “hears appeals and references on decisions made by councils, and considers applications for declarations.”⁷²

Through a strong administrative structure supported by a court structure, the *RMA* creates a national ICZM program. Local stakeholders, Maori, and government are all brought together to attempt to manage resources in a sustainable way. Furthermore, the *RMA* process ensures a multi-sectoral approach to management. The legislation demonstrates that a strong national ICZM strategy is possible for western nations to achieve.

IV. CONCLUSION

Internationally the concept of Integrated Coastal Zone Management has received a great deal of attention. It envisions ocean and coastal management through a multi-sectoral approach. The idea is forefront in the international conventions and documents such as UNCED, Agenda 21 and the Noordwijk principles. Despite a level of international success and recognition for over 20 years, there are many difficulties that have prevented coastal nations from fully developing a national ICZM pro-

⁷⁰ *RMA Overview*, *supra* note 64. For example, the Regional Coastal Plan for Wellington Regional Area.

⁷¹ *Ibid.*

⁷² Formally called the Planning Tribunal. See *Resource Management Amendment Act*, S.N.Z., 1996, no.160.

gram. From a legal perspective the principles and concepts of ICZM present challenging issues which make it difficult for national governments to create such programs.

Canada, Australia and New Zealand have all used different approaches to implementing national programs. The development of a national ICZM program has been difficult for Canada. In Canada, the introduction of the *Oceans Act* spells out the commitment to sustainable development and integrated management. However, the *Act* falls short of addressing jurisdictional issues and explaining how a national ICZM program could be developed. In Australia, a federal nation with similar jurisdictional issues to those in Canada, the government opted not to implement legislation. Rather, a vast policy structure is in place, creating an administrative framework for a national ocean policy. The structure attempts to address jurisdictional issues and creates the opportunity to develop a national ICZM program. The Australian program serves as a good example for Canada on how to set the stage for the development of national ICZM programs. In New Zealand, the coastal resources are managed through the broad administrative structure created by the *Resource Management Act*. As a unitary nation without complex jurisdictional issues, New Zealand has been able to create a comprehensive and effective coastal resource management arrangement. In many respects, the New Zealand model may be seen as an ideal legislative model. Though many of its provisions would be constitutionally unsupported in Canada, the administrative framework demonstrates the ability of national governments to structure marine management in an integrated and sustainable manner.