Participatory Ocean Governance in Practice

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Introduction

Oceans are comprised of finite marine resources available to the global community. Each of us is not responsible for the oceans, yet the oceans are a collective responsibility of all of us as individuals. We recognize these truisms, yet the execution of joint stewardship responsibilities on oceans is fundamentally challenging and largely insufficient. This essay addresses the characteristics of ocean governance and posits a reduced role of governments, and an enhanced decentralized and authoritative participation of ocean stakeholders and the public toward realizing shared responsibilities for ocean sustainability.

The Evolution of Ocean Governance

Elisabeth Mann Borgese’s passion and expertise were critical to modern ocean governance. Mann Borgese, the only female founding member of the Club of Rome (since 1968), encouraged world leaders to improve our understanding of the oceans and management of marine resources for the betterment of humankind.¹

In its report, Our Common Future, the Brundtland Commission reiterated the urgent call for participation broader than government alone in its mandate for a ‘global agenda for change’:

[W]e appeal to “citizens” groups, to nongovernmental organizations, to educational institutions, and to the scientific community... In the final analysis, this is what it amounts to: furthering the common understanding and common spirit of responsibility so clearly needed in a divided world.²

¹ In the Club of Rome report, The Oceanic Circle: Governing the Seas as a Global Resource (United Nations University Press, 1998), Elisabeth Mann Borgese wrote: “the governance of the oceans ... is nonhierarchical, participatory, and multidisciplinary, and includes the private sector as well as governments.”
² World Commission on Environment and Development, Our Common Future (Oxford: Oxford University Press, 1987), xiv–xv.
In 1992, the United Nations Conference on Environment and Development (UNCED), the Rio Earth Summit, adopted Agenda 21, a comprehensive action plan applied to all areas of human impacts on the environment including the oceans.\(^3\) Agenda 21 argues for (i) revamping prevailing systems of governmental decision-making, (ii) significant changes in existing institutional structures, (iii) new forms of dialogue for achieving better integration among national and local governments, industry, science, environmental groups and the public in a participatory process, and (iv) improving education and technical training through interdisciplinary approaches. Agenda 21 was reaffirmed in the 2012 Rio+20 UN Conference on Sustainable Development, which recognized the ‘full participation of civil society’ to “renew our commitment to sustainable development and to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations.”\(^4\)

Participation by all groups on assessing environmental ocean impacts and in the decision-making process is seen as a fundamental and significant characteristic of ocean governance. The assignment of global responsibility for the oceans through institutions that would enable participatory ocean governance is clearly recognized as the means to that desired end.

**Ocean Governance in Canada**

Ocean governance initiatives in Canada have sought to increase communication between ocean stakeholders to facilitate a more participatory decision-making process. Fisheries and Oceans Canada, the ministry responsible for Canadian freshwater and marine habitats, delivers ocean governance at the federal level under the *Fisheries Act*\(^5\) and the *Oceans Act*.\(^6\) Under the *Fisheries Act*, the Minister of Fisheries and Oceans has full discretionary power in all matters pertaining to the conservation of marine resources. The Minister’s decisions on fisheries management and habitat measures, sector allocation and access issues, and how managers will implement integrated management plans, and monitor and enforce regulatory measures are made on the advice of the Minister’s Science Branch. The *Oceans Act* directs the Science Branch to provide scientific advice, including collecting data, basic and applied research,

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3 Available at https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf.
4 United Nations General Assembly, Res. 66/288, “The future we want” (2012), para. 1.
5 *Fisheries Act*, r.s.c. 1985, c. F-14.
6 *Oceans Act*, S.C. 1996, c. 31.
surveying, and publication of maps. Canada’s Ocean Strategy provides the policy and operational framework for delivering ‘integrated ocean management.’ In contrast to the regulatory function of the Fisheries Act, the Oceans Act is recognized as an enabling act that seeks to assemble Canadians to speak up, and to raise public awareness and improve our understanding of the country’s vast ocean environment.

Since the implementation of United Nations Convention on the Law of the Sea and the establishment of Canada’s exclusive economic zone (EEZ) after 1977, Fisheries and Oceans Canada has enhanced its scientific capabilities and management resources under the regulatory powers of the Fisheries Act. During the ensuing decades, however, the Ministry has been subject to (i) ongoing criticism of top-down regulatory control or ‘paternalism’, (ii) an evident lack of transparency of decision-making with respect to the inclusion of its clients and stakeholders in the ocean sector, commercial fisheries, and coastal communities, and (iii) increasingly difficult management decisions associated with conflicting interests such as the poorly defined requirement for First Nations to a moderate livelihood and the oil or the gas industry’s desire to access coastal waters.

In response, the Ministry has attempted to apply integrated coastal zone management; put in place joint co-management agreements among commercial fisheries and within larger land claim agreements with Aboriginal peoples; created consultative bodies, such as the Fisheries Resource Conservation Council; and established large ocean management areas (Lomas) and associated integrated ocean management plans under the enabling terms of the Oceans Act. However, in general, these initiatives have failed to implement participatory decision-making. This is primarily due to degrading marine resources, declining fish stocks, and changing ecosystem conditions (recruitment, climate, and species interactions) and legislative difficulties stemming from the confounding co-existence of regulatory responsibilities under the Fisheries Act and the enabling perspectives of the Oceans Act.

The Ministry’s historical regulatory authority, coupled with its broader intention to enable—with participation, but without authority—are conflicting.

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7 Fisheries and Oceans Canada, 2005–2010 Strategic Plan: Our Waters, Our Future (2008), http://www.dfo-mpo.gc.ca/dfo-mpo/plan-eng.htm.
8 P. Ricketts and L. Hildebrand, “Coastal and Ocean Management in Canada: Progress or Paralysis?” Coastal Management 39, no. 1 (2011): 4–19.
9 A. Dale and D. Armitage, “Marine Mammal Co-management in Canada’s Arctic: Knowledge Co-production for Learning and Adaptive Capacity,” Marine Policy 35 (2011): 440–449.
10 D. Lane and R. Stephenson, “Institutional Arrangements for Fisheries: Alternative Structures and Impediments to Change,” Marine Policy 24, no. 5 (2000): 385–393.
Fisheries and Oceans Canada continues to be characterized by (i) the regulatory authority of the Minister as defined in the *Fisheries Act*; (ii) a lack of co-ordination between science and management and a lack of a systemic approach to dealing with ecosystem problems; (iii) minimal engagement with and feedback to coastal communities and commercial entities; and (iv) a lack of transparency in the decision-making process, which negates participation by the wider public.\(^\text{11}\)

The case of the Eastern Scotian Shelf Integrated Management (essim) initiative is illustrative of these issues. essim was a collaborative ocean planning process that was formed under the *Oceans Act* as part of the Eastern Scotian Shelf LOMA.\(^\text{12}\) The essim Plan was the product of an extensive collaborative and inclusive planning process from 2004 to 2007 among federal and provincial ocean scientists and managers, and the full spectrum of ocean stakeholders from fisheries, tourism, oil and gas, coastal communities, and environmental non-governmental organizations (ENGOS). The aim of the initiative was to develop a participatory integrated ocean management plan to guide the sustainable use, conservation, and management of the Eastern Scotian Shelf. The essim review concluded that the Plan was never officially endorsed and the Plan’s call for action regarding establishing indicators, the evaluation of ocean strategies versus objectives, and the declaration of a mandate for essim, was never confirmed or implemented.\(^\text{13}\) Fisheries and Oceans Canada effectively abandoned LOMAS and the concept of integrated ocean management planning following the Ministry’s redesign after 2011 and the removal of the ‘Oceans’ line from the Ministry’s organization chart.

**Barriers and Solutions to Participatory Ocean Governance**

Barriers to implementation of participatory ocean governance typically arise from the historic role of governments supported by outdated, centralized legislation. To deliver participatory ocean governance in practice, governments

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\(^\text{11}\) Office of the Auditor General of Canada, *Report of the Commissioner of the Environment and Sustainable Development* (2011), Chapter 4, A Study of Managing Fisheries for Sustainability, http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201112_04_e_36032.html.

\(^\text{12}\) Fisheries and Oceans Canada, Oceans and Habitat Branch, *Eastern Scotian Shelf Integrated Management Plan* (Fs23-512/1-2007E, 2007).

\(^\text{13}\) J. McCuaig and G. Herbert, eds., “Review and Evaluation of the Eastern Scotian Shelf Integrated Management (essim) Initiative,” (2013), *Canadian Technical Report of Fisheries and Aquatic Sciences 3025*. 

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need to become auditors.\textsuperscript{14} Government auditors evaluate the achievement of objectives of integrated ocean management plans. The role as auditor provides a level of realistic control for governments managing a distributed system driven by effective and efficient regional users.

One possible approach that has been proposed is the establishment of independent ‘regional ecosystem review boards’ that would be assigned regional authority mandates to make decisions for licensing, access, and allocation of ocean resources. Boards would receive applications for marine access that would include clearly defined and specified triple bottom line objectives (economic, social, and ecological). Marine users would be obligated to report to the boards and to provide feedback for their renewal on condition of meeting economic, social, and ecological targets as indicated in their contracts. If performance is judged to be insufficient by the board, then the contract is not renewed but made available by tender to new suppliers. The \textit{Fisheries Act} would need to be revised in order to release the authority of the Minister to distribute and devolve responsibility and decision-making power to ecosystem-linked regional ecosystem review boards.

The complexity of ocean governance confounds disciplinary scientific knowledge and regulatory authority upon which many national oceans institutions are built. A pragmatic problem-solving approach to ocean governance via a participatory ‘bottom-up’ decision-making perspective is required. Decision theory provides a framework through which complex problems can be analyzed: (i) clear problem definition; (ii) strategic planning and objectives setting; (iii) relevant data collection; (iv) interdisciplinary systems modeling; and (v) ongoing validation and monitoring of decisions. The following characteristics define institutional arrangements for participatory ocean governance based on the problem-solving approach:

1. Co-management—define regional partnerships with scientists, managers, communities, and ENGOs having legislated responsibility and authority to act at the ecosystem level.

2. Cost recovery—empowering participants recognizes the value of decision support and administrative functions for access, licensing, data collection, marine resource assessment, monitoring and enforcement. The costs of these activities should be shared by sector participants.

3. Rights-based characteristics—participatory decision-making explicitly assigns rights and privileges to the participants. Allocative rights-based

\textsuperscript{14} D. Lane, “Canada’s Commercial Fisheries: Share the Wealth or Create Prosperity?” \textit{Optimum Online} 42, no. 2 (2012), http://www.optimumonline.ca/article.phtml?id=412&page=1.
systems indicate a shift toward community or private ownership and away from notions of ‘common property’.

4. Interdisciplinary systems teams—marine activities must be managed with regard for the whole ecosystem and with the consideration of economic, social, administrative, and ecological impacts of alternative decisions.

5. Management by objectives and continuous improvement—effective, dynamic, multidisciplinary management requires movement toward corporate and institutional targets emerging from ecological, economic, and social objectives.

6. Precautionary approach—in complex marine ecosystems, scientists determine impacts with uncertainty. To adopt a precautionous approach acknowledges this and indicates preference for recommendations that are more conservative.

7. Transparency—as a prerequisite for participatory ocean governance, adaptive management approaches require that information is rapidly, freely, and openly accessible to all participants, to the public, and to policy-makers.

8. Mechanisms for conflict response—conflict response mechanisms are necessary to reconcile the diverse interests of participating users.\(^{15}\)

Elisabeth Mann Borgese’s vision to develop a truly participatory system of governing our oceans remains as a work in progress that will be realized when the oceans sector and governments agree to revise their respective roles toward greater shared responsibility.

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\(^{15}\) *World Ocean Review, Sustainable Use of Our Oceans—Making Ideas Work*, 4th edition (Hamburg: Maribus, 2015).